"IGNORANCE ALLIED w/ POWER IS THE MOST FEROCIOUS ENEMY JUSTICE CAN HAVE"

~JAMES BALDWIN

Molly Crabapple

Anti-Blackness in Policy Making:
Learning from the Past to Create a Better Future

2019-20 Volume

HARVARD KENNEDY SCHOOL JOURNAL OF AFRICAN AMERICAN POLICY

"Anti-Blackness in Policy Making:
Learning from the Past to Create a Better Future"

2019-20 Volume

Support the Journal

The *Harvard Kennedy School Journal of African American Policy* (ISSN# 1081-0463) is the second-oldest student-run review published annually by the John F. Kennedy School of Government at Harvard University. An annual subscription is $20 for individuals and $40 for libraries and institutions. Additional copies of past volumes may be available for $20 each from the Subscriptions Department, *Harvard Kennedy School Journal of African American Policy*, 79 JFK Street #16, Cambridge, MA 02138.

Donations provided in support of the Harvard the Harvard Kennedy School Journal of African American Policy are tax-deductible as a nonprofit gift under the John F. Kennedy School of Government at Harvard University's IRS 501(c)(3) status. Please specify intent.

Send address changes to:
Harvard Kennedy School Journal of African American Policy
79 JFK Street #16
Cambridge, MA 02138

Or by e-mail to hjaap@hks.harvard.edu.

Copyright

Journal Staff

Acknowledgements

Table of Contents

Editor's Note

Danielle Simms

Danielle Simms is a joint degree student at Harvard Kennedy School and Harvard Law School. Prior to graduate school, Danielle worked as an engineer in a manufacturing plant for two years and as a consultant for non-profits for one year. Danielle has spent significant time volunteering and organizing around issues related to racial justice.

Anti-Blackness in Policy Making: Learning from the Past to Create a Better Future

After an event at Harvard Law School, a White male student shared with me that the further we get from segregation, the less Black people can blame segregation for current disparities. This future attorney, who undoubtedly will be in a position of power during his career, lacked an understanding of the complex history of race in this country. He did not understand that the systemic anti-Blackness that originated with the enslavement of African people did not cease to exist simply because explicit, legally sanctioned racism "ended" in the 1960s. He did not understand that the people who held racist beliefs and upheld segregation in the past are the same people who taught their children, their grandchildren, and the students in their classrooms who are alive today to hate. That this enabled not only systemic racism, but also interpersonal racism.

Though this was a student at HLS, many policymakers around the country hold similar beliefs. For instance, Senator Mitch McConnell told reporters that "he does not favor reparations 'for something that happened 150 years ago, for whom none of us currently living are responsible.'"[1] 2019 marked four-hundred years that Black people have been in this country. The United States subjected Black people to 250 years of slavery, 100 years of

de jure racial segregation—legal separation of racial groups based on the law—and fifty years where significant racial disparities continued to persist. In response to McConnell's comments, author Ta-Nehisi Coates "ticked off a list of government-sponsored discriminatory policies—including those in Mr. McConnell's birthplace of Alabama —such as redlining and poll taxes" that occurred well after the 150-year marker that McConnell identified.[2] By not understanding race and history, we ensure the systems of oppression that have been in place for the past 400 years will not be challenged, and as a result, will continue. By not understanding race and history, the natural answer to the questions "why are African-Americans overrepresented in the criminal punishment system" and "why are African-Americans disproportionately low-income" will not be systemic oppression, but racial inferiority.

The dominant narrative that the majority of us have been taught to believe is that institutions, like the courts and police officers, are fair, good, and constantly in pursuit of justice. With the twenty-sixth volume of the Harvard Kennedy School Journal of African American Policy, we hope to challenge this belief by highlighting how a diverse set of institutions and policies have historically worked to further marginalize Black people while drawing connections to how similar practices exist today. The majority of the works in this volume also contain recommendations for how we can prevent the creation of anti-Black policies in the future.

The first article in this volume, "Institutional Racism Lives at HKS, Compromising Its Effectiveness as a Public Institution," was written by Yohana Beyene, Karl Kumodzi, and Danielle Simms, three Harvard Kennedy School students who sought to bring to light the institution's structural racism in hopes that the exposure would cause change to occur within the institution.

The op-ed highlights the need to teach public policy students about race and history to ensure their work after school does not create further harm by perpetuating anti-Black policies.

In "Segregated Healthcare: Past and Present," James Blum and Kamini Doobay draw parallels between the United States' history of segregated healthcare based on race and the segregated healthcare that exists today based on class that disproportionately impacts Black people. Blum and Doobay offer ways that we can learn from our past to better understand how we can create an equitable healthcare system moving forward.

In "Vilify Them Night After Night: Anti-Black Drug Policies, Mass Incarceration, and Pathways Forward," Victor J. St. John and Vanessa Lewis discuss the long-lasting impacts of anti-Black policies through the lens of the "War on Drugs." St. John and Lewis also propose ways in which current anti-Black policies can be addressed and how future anti-Black policies can be prevented.

Mutale Nkonde describes the way technology can be used to promote anti-Black policies in "Automated Anti-Blackness: Facial Recognition in Brooklyn, New York." The article explores the introduction of facial recognition technology to a residential building in the Brownsville neighborhood in New York City.

In "Advancing Racial Justice Through Local Governments," Zoe Bulger introduces a framework for city and county officials to contemplate while they seek to address racial justice issues. She takes leaders through five main stages of racial justice work within local government and communities, provides clear action steps for city and county officials to take while embarking on the work, and reiterates the importance of centering racial justice work within cities.

Miriam Edelman showcases an intimate and masterful knowledge of the voting history of the District of Columbia and its particular modern-day implications for Black residents in "D.C.: The Nation's Plurality African American Capital and Disenfranchisement in the U.S. Congress." As Edelman explains, the calls for full voting rights and congressional representation for D.C. have been centuries in the making and must be acted upon now.

In "'With All Deliberate Speed': Closing the Black Educator Gap," University of Chicago public policy student Michael Johnson deftly lays out the causes of the current dearth of Black educators and the consequences this has for Black students. Johnson closes by explaining how targeted investments can make a difference.

Mara Roth analyzes the main arguments against the 2009 North Carolina Racial Justice Act in "Discriminatory Death: An Analysis of the Legislative Advocacy Against the North Carolina Racial Justice Act." The RJA sought to minimize racial bias in death penalty sentencing by introducing statistical evidence of racial discrimination. She asserts that the main arguments against the RJA are rooted in anti-Blackness. Ultimately, Roth urges racial justice activists to use the findings of the article to better understand the arguments of the opposition.

The works in this volume provide a few examples of how the racism of the past has simply transformed and is still present in today's society. I encourage you to always seek to understand how policies that are proposed today reflect policies that have come before and the impact of those policies on Black communities. However, understanding the intersection of race and history is only the beginning of the work towards racial equity. We must also actively unlearn and combat anti-Black beliefs within ourselves and the world.

Endnotes

1. https://www.nytimes.com/2019/06/19/us/politics/slavery-reparations-hearing.html

2. Ibid.

Institutional Racism Lives at HKS, Compromising Its Effectiveness as a Public Service Institution

Yohana Beyene,
Karl Kumodzi,
Danielle Simms

Yohana and Karl are second year MPP students at the Harvard Kennedy School. Danielle is a third year joint MPP/JD student at Harvard Kennedy School and Harvard Law School

"Over the last few years many Negroes have felt that their most troublesome adversary was not the obvious bigot . . . but the white liberal who is more devoted to 'order' than to justice, who prefers tranquility to equality . . . Even in areas where liberals have great influence . . . schools . . . and politics—the situation of the Negro is not much better than in areas where they are not dominant. This is why many liberals have fallen into the trap . . . where a token number of Negroes adds color to a white-dominated power structure. They say . . . 'Our university has no problem with integration, we have one Negro faculty member and even one Negro chairman of a department.'"

– Dr. Martin Luther King Jr.
Where Do We Go From Here:
Chaos or Community?

These words by Dr. Martin Luther King Jr. were directed towards liberal White Americans in 1967—but they could easily have been directed at the mostly White senior administration and faculty at John F. Kennedy School of Government at Harvard University in 2019. The last line rings alarmingly true—Kennedy School has only one Black tenured faculty member.

Harvard Kennedy School prides itself on being the world's premier training ground for current and future policymakers, politicians, researchers, and other public servants. It aims to maintain this status through recruiting promising students, world renowned faculty and lecturers, accomplished fellows, and other distinguished visitors to cultivate the solutions and skills needed for public governance. But the Kennedy School fails to do the following: educate its students on systemic oppression; recruit students and staff from underrepresented racial identities in meaningful numbers; and adequately equip faculty members to effectively discuss racism and power in their classrooms. The institution is run by an administration that prefers tranquility to equality, resisting the transformative changes necessary to address these critical issues. This perpetuates institutional racism at the Kennedy School and impedes its stated mission to prepare graduates for leadership in a twenty-first century democracy.

Race Cannot be Separated from Public Policy

Teaching students about the complex history of systemic racism in the United States and how to undo those mistakes is not a core goal of the Kennedy School—there are no required courses on the topic. Though some students opt-in to the very few classes analyzing racism, these are usually students who are already interested in the topic and have some base level knowledge.

This is not just a matter of diverging academic interests amongst students. The public policy problems that Kennedy School students seek to solve are deeply

racialized—whether they acknowledge it or not. If these students do not understand

> *The public policy problems that Kennedy School students seek to solve are deeply racialized – whether they acknowledge it or not. If these students do not understand racism, history, and power, then they will further harm vulnerable populations through their work after graduation.*

racism, history, and power, then they will further harm vulnerable populations through their work after graduation.

This topic is relevant for international students as well. Systemic oppression and racism are a global phenomenon, and this is a missed opportunity to give international students the tools to understand both within a global context.

A Lack of Students, Faculty and Staff of Color

There is an appalling lack of students from historically marginalized backgrounds enrolled at the Kennedy School. According to the *Data on Certain Aspects of Diversity at Harvard Kennedy School* report released in October 2019, only 19 percent of the students who are US citizens at HKS are Black or Hispanic/Latinx.[1] There are no American Indian, Alaskan Native, or Pacific Islander students.[2] Representation amongst the faculty is worse. An overwhelming majority of tenured professors—78 percent—are White.[3]

The lack of a critical mass of students and professors from underrepresented racial

backgrounds hampers the sophistication and depth of classroom discussion and learning. During the 2018-19 school year, conversations about policies that have serious repercussions on communities of color devolved into surface-level conversations, with discussions including racist tropes. During a discussion in a required course about why checks and balances failed to prevent the internment of Japanese-Americans during World War II, one masters in public policy (MPP) student said that maybe the internment was "the right decision." The professor did not address the comment.

A Lack of Racially Literate Faculty Members

The lack of racial literacy amongst current faculty members negatively and disproportionately impacts students of color and

> *The administration's failure to critically examine how racism functions and listen and respond to students most affected does a disservice to all students and entrenches systemic racism.*

perpetuates institutional racism. This is exemplified in Mathias Risse. Risse is the director of the Kennedy School's Carr Center for Human Rights and is one of four professors who teach the ethics course that is required for first year MPP students. During the fall semester of 2018, Risse repeatedly and without prior notice singled out students in class based on his perception of their ethnic and religious affiliations. This included asking a South Asian student to describe a Hindu religious text because he

assumed the student was Hindu, when in fact they were not.

Risse and Kennedy School Professor Richard Zeckhauser co-wrote a philosophy article in 2004 that outlines a moral justification for racial profiling.[4] After several critical responses from peers on the logic and implications of their paper, they wrote another article in 2007 reinforcing their original position.[5]

The articles on racial profiling have concerned many students who are required to take Risse's ethics course. The article rests on the dangerous assumption that being of a certain race (most of his examples are of Black people) is significantly correlated with the "propensity to commit certain crimes."[6] This premise is not only an intentionally constructed and explicitly racist lie, but it also ignores the well-known fact that data on crime rates are extremely flawed in part because of the disproportionate targeted policing of Black people.[7] Black people are not more prone to criminality than other people, but the article indicates Risse and Zeckhauser may believe otherwise.

In a conversation with students during the 2018-19 school year, Risse maintained that he and Zeckhauser intended to engage with the discourse around the use of racial information in a neutral approach informed by statistics. He also affirmed that he believes using racial profiling is justified for policing in certain situations. The United States does not have a neutral criminal justice system, and the arguments Risse made did not have a neutral effect. His work reinforces an unjust system that criminalizes Black people and justifies the use of police practices like racial profiling that lead to assault and death. Risse stated that far right groups who he did not agree with embraced his paper and invited him to various speaking engagements. Risse says he declined these

invitations, and still maintains that his paper is neutral and objective.

Despite students voicing significant concerns about Risse to administrators in previous years, the Kennedy School named him the faculty director of the Carr Center for Human Rights Policy.[8] The administration's failure to both critically examine how racism functions and to listen and respond to students most affected does a disservice to all students and entrenches systemic racism. Though we only reference professor Risse, he is not alone in perpetuating racist beliefs that create a harmful environment both inside and outside of the Kennedy School.

A Lack of Commitment by the Administration

Over the span of just over six months in 2017, three Kennedy School administrators—all Black women—stepped down.[9] This is indicative of an environment that is not welcoming to faculty of color who advocate strongly for students of color who feel marginalized by the Kennedy School's practices. One of the three administrators, Alexandra Martinez, then the assistant dean for diversity and inclusion, spoke openly about this, publicly declaring a "lack of support" from school leaders around addressing issues of diversity and racism.[10] It would be helpful to know why the others stepped down, but a commonly held belief is that nondisclosure agreements prevent us from knowing. A fourth Black woman, a beloved administrator, left at the end of the 2018-19 school year.

In addition to their professional obligations, the faculty of color who remain at the Kennedy School perform the all too commonly invisible labor of supporting students of color at predominantly White institutions.[11] This labor is not recognized or rewarded by the administration, but it should be. There should also be other support systems in place so that these professors are not overburdened.

Existing reports and articles have established that the Kennedy School does not have an inclusive classroom culture and fails to recruit students, staff, and faculty of color.[12] The Kennedy School's leaders are making deliberate choices that deprioritize confronting racism and instead maintain the status quo.

This failure extends to the dean of the Kennedy School, Douglas Elmendorf. Last fall, during a small group conversation, one of the authors of this article told Elmendorf that she did not believe the Kennedy School adequately taught students to understand how public policy can perpetuate systemic racism. As a result, she added, Kennedy School graduates will continue to harm non-White communities if they do not actively learn how not to. Another student stated it was unacceptable that there was only one class during the fall semester explicitly about race.

Elmendorf stated that there are not more classes about the intersection of race, history, and policy because there are not enough qualified professors to teach the classes. When asked specifically if he was saying there were not exceptional people of color outside of the Kennedy School who could be hired to teach classes about race, Elmendorf simply replied that faculty members are extremely protective of who gains entrance into the Kennedy School and that there is a high bar to pass.

Another explanation Elmendorf gave for the lack of required classes exploring race and policy is that the faculty that sets the curriculum are all passionate about different topics, which makes determining requirements difficult. What Elmendorf appears to not understand is that all aspects of domestic policy and many aspects of foreign policy are

racialized. Racial literacy[13] is not a second or third language a policymaker can opt into. It is the *lingua franca* of American democracy and permeates all areas of work, including seemingly "objective" sciences such as statistics and economics.

Elmendorf may believe the Kennedy School's hiring practices are objective and decisions about what to make required are fair, but when the school's tenured faculty, a group that is 64 percent White and male,[14]

> *Racial literacy is not a second or third language a policymaker can opt into. It is the* lingua franca *of American democracy and permeates all areas of work, including seemingly "objective" sciences such as statistics and economics.*

determines what credentials are necessary to hire a professor and what is relevant to the curriculum, their bias will inevitably impact the process in detrimental ways.

Where Do We Go From Here?

The issues at the forefront of what the Kennedy School calls our "leadership crisis"—immigration, policing, voter disenfranchisement, technology, AI, national security, and Trumpism—are deeply racialized. If we do not prioritize engaging with our nation's racist past and present, these problems will only become more entrenched. For the Kennedy School to truly prepare its students to be effective public servants, policymakers, and change agents, it should do the following:

1. Require a course on the history of racialized policy in the United States and abroad. Dr. Khalil Muhammad's "Race, Inequality, and American Democracy" is a strong starting point. No student should graduate from HKS without knowing basic American history, how race was constructed, the discriminatory policies that have been put in place to preserve it, and how it functions institutionally today. Until more faculty members are hired to teach this class, the Kennedy School could consider partnering with Harvard College to offer these classes.

2. Cluster hire a cohort of three to four professors who critically study race, gender, class, or power. One or two token faculty members cannot change the culture of the Kennedy School. Research shows a critical mass of people is needed in an organization to make any real change.[15]

3. Anti-racism > Diversity: The Kennedy School should move away from the current frameworks centered around "implicit bias" and "diversity" that are used for faculty training and new student orientation. Bias and diversity focus on interpersonal prejudice and cosmetic diversity. Instead, the school should adopt frameworks and trainings offering a critical analysis of power and institutional racism, which facilitate an understanding of institutional racism and the types of solutions that redistribute power and promote antiracist pedagogy.

King's critique of White moderates was a critique of liberalism itself. Though liberalism is often taught as an ideology in which all members of a society are equal, free, and have certain rights, many of the architects of liberalism were in fact exclusive. They were explicit that only White, property-owning, able-bodied men had these rights.[16] Phenomena like the genocide of indigenous people, chattel slavery, and restrictions on the right to vote are often taught at institutions like

the Kennedy School as aberrations from the ideals of the system, when, in fact, they are woven into the fabric of liberalism itself.

Liberalism not only tells us that we *should* be equal and free, but that we already *are*. Under this assumption of existing equality, efforts to hire more faculty who critically study race or gender, or to recruit more students of color are seen as going too far. Why give special treatment to one group of people if, despite past harms, they are now on a level playing field?

In the spirit of King, whom the Kennedy School so often celebrates, we need to actively combat these trappings of liberalism by recognizing that doing the bare minimum is not anti-racist in an actively exclusionary, violent, and unequal society.[17]

Passive racism will not move us towards the world we claim to want.

Yohana Beyene is a second year masters in public policy student at Harvard Kennedy School (HKS) and co-chair of its Black Student Union. Prior to HKS, Yohana was a research associate at the Columbia University Justice Lab working on emerging adult justice research initiatives, promoting developmentally appropriate criminal legal system responses for youth ages 18-25. She came to the Justice Lab after working as a housing advocate at Home-Start, Inc., where she worked to stabilize clients entering housing from chronic homelessness. Yohana has been an active member of Young Abolitionists, a grassroots collective in Boston providing unwavering support to members of the Boston and Greater Boston community affected by the penal system, and in 2017 she co-organized the International Conference on Penal Abolition. She has also organized affordable housing and anti-displacement campaigns in the Jamaica Plain/Roxbury neighborhoods of Boston. She currently sits on the board of Families for Justice as Healing, a nonprofit in Massachusetts working to end the incarceration and criminalization of women and girls. She is a graduate of Columbia University with a bachelors in English literature and a special concentration in human rights.

Born in Lome, Togo and raised in Las Vegas, NV, Karl Kumodzi is a 2020 masters in public policy candidate at Harvard Kennedy School, where he's researching democratic participation in solidarity economy institutions. Prior to HKS, Karl was an organizer at Blackbird and in the Movement for Black Lives coalition, where he helped manage the development of the Vision for Black Lives policy platform in 2016. He was also a 2014-2015 Gardner fellow at the Center for Popular Democracy, and has written or contributed to a number of articles and reports on universal voter registration, policing, and progressive municipal revenue policy. Karl holds a BA in public history and a minor in comparative studies in race & ethnicity from Stanford University.

Danielle Simms is a joint degree student at Harvard Kennedy School and Harvard Law School. She is the co-editor-in-chief of the Harvard Kennedy School Journal of African American Policy. While in graduate school Danielle has provided representation for indigent clients in clerk magistrate hearings through Harvard Defenders. She also represented indigent clients in housing matters through HLS' housing clinic. Prior to graduate school, Danielle worked as an engineer in a manufacturing plant for two years and as a consultant for non-profits for one year. Danielle has spent significant time volunteering and organizing around issues related to racial justice. Danielle holds a BS in mechanical engineering from Stanford University.

Endnotes

1. "Data on Certain Aspects of Diversity at Harvard Kennedy School," Harvard Kennedy School, October 2019. https://knet.hks.harvard.edu/Diversity-Inclusion-Belonging/Documents/HKS-Diversity-Data-Report-2019.pdf.

2. "Data on Certain Aspects of Diversity at Harvard Kennedy School"

3. "Faculty Development and Diversity: 2019 Annual Report," Harvard University. https://faculty.harvard.edu/files/faculty-diversity/files/2018-19_full_annual_report_for_web.pdf

4. Mathias Risse and Richard Zeckhauser, "Racial Profiling," *Philosophy and Public Affairs* 32, no. 2 (2004): 131. https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1088-4963.2004.00009.x.

5. Mathias Risse, "Racial Profiling: A Reply to Two Critics," *Criminal Justice Ethics* 26, no. 1 (2007): 4. https://www.tandfonline.com/doi/abs/10.1080/0731129X.2007.9992207.

6. Risse and Zeckhauser, "Racial Profiling"

7. "The Condemnation of Blackness," Video of professor Khalil Muhammad. https://www.youtube.com/embed/1z_A1ediUWY; Kim Farbota, "Black Crime Rates: What Happens When Numbers Aren't Neutral," *HuffPost*, 2 September 2016. https://www.huffpost.com/entry/black-crime-rates-your-st_b_8078586.

8. "Mathias Risse, Lucius N. Littauer Professor of Philosophy and Public Administration, named Faculty Director of Carr Center for Human Rights Policy," *Carr Center for Human Rights Policy*, 9 October 2018. https://carrcenter.hks.harvard.edu/news/mathias-risse-lucius-n-littauer-professor-philosophy-and-public-administration-named.

9. Alexandra A. Chaidez, "Kennedy School Faces Dearth of Minority Faculty and Admins," *Harvard Crimson*, 3 April 2018. https://www.thecrimson.com/article/2018/4/3/hks-faculty-diversity-issues/.

10. Ibid.

11. Audrey W. June, "The Invisible Labor of Minority Professors," *The Chronicle of Higher Education*, 8 November 2015. https://www.chronicle.com/article/The-Invisible-Labor-of/234098.

12. HKS Struggles to Recruit Minority Students, https://www.thecrimson.com/article/2018/3/22/0-kennedy-school-diversity/; Kennedy School Faces Dearth of Minority Faculty and Admins, https://www.thecrimson.com/article/2018/4/3/hks-faculty-diversity-issues/; Students Solicit Faculty Support for HKS Diversity Pledge, https://www.thecrimson.com/article/2018/5/4/kennedy-school-diversity-pledge/; At Meeting, Kennedy School Students Raise Diversity Concerns, https://www.thecrimson.com/article/2018/3/30/hks-diversity-committee-meeting/; Harvard Kennedy School Still Mostly White and Male, Newest Report Indicates, https://www.thecrimson.com/article/2018/10/29/hks-diversity-report/.

13. Racial literacy is the capacity to decipher the durable racial grammar that structures racialized hierarchies and frames the narrative of our republic. Lani Guinier, "From Racial Liberalism to Racial Literacy: Brown V. Board of Education and the Interest-Divergence Dilemma," *The Journal of American History* 91, no. 1 (2013). https://www.researchgate.net/publication/256016027_From_Racial_Liberalism_to_Racial_Literacy_Brown_V_Board_of_Education_and_the_Interest-Divergence_Dilemma.

14. "Faculty Development and Diversity: 2019 Annual Report," *Harvard University*. https://faculty.harvard.edu/files/faculty-diversity/files/2018-19_full_annual_report_for_web.pdf

15. Colleen Chesterman, Anne Ross-Smith, and Margaret Peters, "The Gendered Impact on Organizations of a Critical Mass of Women in Senior Management," *Policy and Society* 24, no. 4 (2005): 69-91. https://www.sciencedirect.com/science/article/abs/pii/S1449403505700692.

16. George Yancy and Falguni A. Sheth, "How Liberalism and Racism Are Wed," *New York Times*, 27 February 2015. https://opinionator.blogs.nytimes.com/2015/02/27/how-liberalism-and-racism-are-wed/?mtrref=undefined.

17. Danielle Allen, "Martin Luther King, Jr.: Life, Loss, Legacy," Harvard Kennedy School Institute of Politics, 17 January 2019. https://iop.harvard.edu/forum-podcast/martin-luther-king-jr-life-loss-legacy.

Segregated Healthcare: Past as Present

James Blum and Kamini Doobay

James Blum is a joint MD-MPP student at Harvard Kennedy School and Icahn School of Medicine at Mount Sinai. He will graduate from both institutions in the spring of 2021. Prior to medical school, he spent two years working as a congressional staffer after graduating in 2014 from Brown University with a BS in Chemistry with Honors. James hopes to one day work as an emergency medicine physician and work to eliminate inequities in healthcare through public policy.

Kamini Doobay graduated from the Icahn School of Medicine at Mount Sinai in 2017 and is currently an emergency medicine resident at Bellevue/NYU. Born and raised in Queens, New York, she has dedicated herself to advocating against inequalities in the healthcare system. Kamini is the founder and organizer of The NYC Coalition to Dismantle Racism in the Health System.

At hospitals in New York City and across the United States, patients are segregated on the basis of their insurance status. Uninsured and publicly insured patients are often seen in different facilities by different providers and at different times than other patients with private insurance. In New York City, people of color are disproportionately represented among individuals with public insurance, so despite the racial integration of hospitals after Medicare in 1965, this system of segregation by insurance status results in *de facto* segregation by race.[1] This paper will explore how the current system of segregated care is but the latest iteration of racism in the healthcare system. It will also examine how early efforts to integrate hospitals during the Civil Rights movement can inform efforts to integrate hospitals today. Lastly, this paper will address why healthcare reform should be approached as an issue of civil rights.

Without understanding the legacy of segregation and racism in the healthcare system, it will be impossible to eliminate the inequities in health between Black and White patients that have been widely documented in areas ranging from maternal morbidity to stroke mortality.[2] These disparities in health outcomes can be traced back to the provision of healthcare to enslaved people in the United States. The United States' first system of segregated healthcare existed during this time. Medical care for enslaved people was focused not on their health but on preserving their physical ability. Furthermore,

enslaved people were often subjected to tests by White doctors who sought to develop new practices and improve their skills. In a book about the history of medical experimentation on Black Americans, Harriet A. Washington explains how "southern medicine of the eighteenth and early nineteenth centuries was harsh, ineffective, and experimental by nature. Physicians' memoirs, medical journals, and planters' records all reveal that enslaved [B]lack Americans bore the worst abuses of these crudely empirical practices."[3] For instance, J. Marion Sims, the

> *Without understanding the legacy of segregation and racism in the healthcare system, it will be impossible to eliminate the inequities in health between Black and White patients that have been widely documented in areas ranging from maternal morbidity to stroke mortality.*

"father of American gynecology," developed surgical techniques for correcting vesicovaginal fistulas (an abnormal tract between the bladder and vagina that often results as a complication of obstructed childbirth) by experimenting with novel operations on un-anaesthetized Black female slaves.[4] In his autobiography Sims writes, "There was never a time that I could not, at any day, have had a subject for operation."[5] After perfecting his technique, Sims moved to New York City where he opened a hospital for White women, and until 2018 he was commemorated with a statue just outside Central Park in East Harlem. While less extreme, this practice has a direct equivalent today. Physicians in training provide the majority of care to publicly insured patients in both

New York City and the rest of the country, while privately insured patients are cared for by fully licensed physicians. Furthermore, while some people excuse Sims and doctors of the past for believing false racist notions of medicine, current medical professionals continue to hold racist beliefs regarding patients. For example, a recent study of medical students found that many held false beliefs about Black people, including that their nerve endings are less sensitive to pain, which translated into an underestimation of pain levels and lower likelihood of providing accurate treatment recommendations.[6]

As the American healthcare system continued to develop during the late nineteenth and early twentieth centuries, a separate and unequal system of healthcare developed for Black Americans. In most places in the country, separate hospitals existed for Black patients; in larger hospitals, Black patients were kept on a separate ward with separate blood banks, staff, and services. Furthermore, there was a separate training system for Black medical students, who were banned from most state universities. Northern private universities refused to accept them as well. This exclusion continued and was compounded as Black physicians were prohibited from admitting their patients to hospitals serving White patients. This exclusion led to the creation of more than four hundred hospitals for Black patients operated by Black professionals.[7] In a morbid reminder of the quality of the hospitals that would accept Black patients, in her book Washington recounts how the segregated healthcare system forced Black patients to use "hearses as ambulances."[8] This system of Black hospitals largely developed in the early twentieth century without regulation or resources from the government.

The first major expansion of the federal government's role in healthcare continued

the system of segregated care, but also helped lay the ground for its abolition. The 1946 Hill-Burton Act provided hospitals with matching funds for construction and renovation. However, these funds were not distributed equitably. Inserted into the legislation was language requiring that a hospital or addition using the funds must be "made available to all persons residing in the territorial area of the applicant without discrimination on account of race, creed or color but an exception will be made in cases where separate hospital facilities are provided for separate population groups if the plan makes equitable provision on the basis of need for facilities and services of like quality for each such group."[9] This language, inserted by Southern senators, is the only explicit instance of federal legislation permitting discrimination on the basis of race in the twentieth-century and it enabled the massive expansion of a segregated healthcare system.[10] This language would also contribute to the undoing of segregated healthcare following the Supreme Court's decision in *Brown v. Board of Education*.

At the same time that federal legislation was shaping the nation's healthcare system, it was also being shaped by medical professionals and the societies that represented them. Indeed, one of the strongest proponents of protecting the segregated healthcare system from government involvement was the American Medical Association (AMA). Founded in the eighteenth century, the AMA had long excluded Black physicians. By allowing its constituent groups to exclude Black physicians, the AMA reinforced segregated care since membership in AMA affiliated groups was often required to have admitting privileges at hospitals.[11] The AMA also actively opposed policies that would have expanded healthcare for all Americans. The group is largely responsible for

killing President Harry Truman's proposal for a national healthcare system. In addition to working against Truman's healthcare plan, the AMA actively opposed Medicare and did not work to pass either the Civil Rights Act of 1964 or to remove the 'separate but equal' language from the Hill-Burton Act of 1946.

In response to the AMA's racism and support for segregation, Black physicians formed their own association—the National Medical Association (NMA). In addition to supporting Black physicians, the NMA took an active role in supporting policies that aimed to desegregate healthcare and expand access to it. For instance, while the AMA opposed Truman's national healthcare program, the NMA supported it. The NMA's advocacy ultimately helped to "strengthen the leadership role of Black health

[A] recent study of medical students found that many held false beliefs about Black people including that their nerve endings are less sensitive to pain, which translated into underestimation of pain levels and lower likelihood of providing accurate treatment recommendations.

professionals in the emerging Civil Rights movement and, eventually, in the struggle to pass Medicare and Medicaid."[12] This work by the NMA and Black physicians benefited not just Black patients but all patients who were marginalized by the American healthcare system. In addition to supporting policies through the NMA, individual Black physicians were also crucial in serving as plaintiffs in court cases that would ultimately help unravel the segregated healthcare system.

After the Supreme Court in *Brown v. Board of Education* found the legal principle of "separate but equal" to be unconstitutional, Dr. George Simkins, a Black dentist from Greensboro, North Carolina, brought a suit that challenged the legality of the "separate but equal" clause in the Hill-Burton Act. This clause was quickly declared unconstitutional by a circuit court, and President John F. Kennedy's administration decided to support the lawsuit. Importantly, this case was being considered by the Supreme Court at the same time that the Senate was debating the Civil Rights Act of 1964, to which some Southern senators were trying to add a "separate but equal clause." Ultimately, the Supreme Court issued a decision that upheld the circuit court ruling: Hill-Burton's language was deemed unconstitutional. This was understood by the Senate to be an implicit notice that any such language inserted into the Civil Rights Act of 1964 would ultimately be found unconstitutional.[13]

> [O]ne of the strongest proponents of protecting the segregated healthcare system from government involvement was the American Medical Association (AMA).

Ultimately, the Civil Rights Act of 1964 prohibited the use of federal funding to "encourage, entrench, subsidize, or result in racial discrimination."[14] This language, contained in Title VI of the Civil Rights Act of 1964, was crucial to forcing the desegregation of hospitals. By stipulating that only integrated institutions could receive the massive increases in federal funding that would come during the second half of President Johnson's presidency, Title VI ensured that Medicare and other pieces of legislation aimed at reducing poverty and racial discrimination also prohibited segregation.[15] When Medicare was passed a year later in 1965 with the support of the NMA—overcoming the opposition of the AMA—only integrated hospitals would be able to receive funding under Medicare due to Title VI. However, making sure all hospitals were compliant with this regulation would be more challenging.

Despite passing Medicare with Title VI restrictions, it was not clear how Congress could ensure that hospitals were not engaging in racial discrimination. Most notably, Congress failed to provide funding for the government to investigate which hospitals were actually integrated.[16] Furthermore, early integration efforts of schools had taken advantage of the Court's call in *Brown v. Board of Education* for "all deliberate speed," which allowed states to delay integration by claiming they needed a long time to implement desegregation plans.[17] To address these challenges, the Department of Health, Education, and Welfare decided that hospitals would have to prove they were complying with Title VI in order to receive federal funds rather than having individuals or organizations challenge hospitals that had already received public funds. This was key to the desegregation efforts, effectively placing the burden of compliance on the hospitals and ensuring that they would feel pressure to integrate or be unable to take advantage of federal funds. To oversee these efforts, the Office of Equal Health Opportunity (OEHO) was formed.[18] Federal workers with the OEHO were charged with visiting Southern hospitals and ensuring that they were integrated according to a strict standard. Their jobs were not easy; they frequently faced intimidation and misdirection from hospital administrators in the south who sought to maintain the segregated healthcare system. On-the-ground

volunteers often had to repeatedly visit hospitals before they "gave up attempting compliance charades and fully integrated the patient floors."[19] However, because of these inspections "approximately three thousand hospitals [were] quietly, uneventfully, and successfully desegregated in less than three months."[20] This practice offers lessons for today on how to work against segregated care by insurance status.

One important lesson to be gleaned from early efforts to desegregate healthcare is that achieving systems reform will only happen through the dedicated effort of volunteers and individuals on the ground. Put more simply, the "master's tools will never dismantle the master's house."[21] In the case of segregation by insurance status in NYC, this work translates into helping hospitals—and the public—see the injustice of segregated care. For example, work by students at the Mount Sinai School of Medicine in NYC showed a significant difference in the time it takes to schedule appointments for clinics that serve privately insured patients versus publicly insured patients, which is often on the scale of five weeks.[22] Similarly, other work at Mount Sinai has shown that medical students believe that segregated care negatively impacts their medical education and leads to worse outcomes for patients.[23] This work has been used to push the administration of the Mount Sinai Hospital to try to integrate some aspects of the labor and delivery floors as well as to bring attention to the issue through the New York City Council and other local organizations. Moving forward, volunteers and individuals on the ground need to continue to draw attention to segregated healthcare and push institutions to make integration a priority.

One example of an organization doing this work is the NYC Coalition to Dismantle Racism in the Health System, which seeks to address personally mediated, internalized,

and structural racism as the primary driver of health inequities.[24] This action-oriented collective consists of more than 30 member organizations, 7 seven working groups, and over 400 members. Importantly, the coalition brings together community organizers, health professionals, public health experts, and lawyers to act against racism in the healthcare system. The coalition has previously hosted a convening examining

> *[B]ecause of these inspections approximately three thousand hospitals [were] quietly, uneventfully, and successfully desegregated in less than three months.*

violence as a health issue and is committed to bringing this same focus to its work on segregated care.

Another lesson can be taken from early efforts to desegregate hospitals: government dollars can be an effective incentive to desegregate. Institutions frequently cite differences in the funds they receive for providing care to publicly insured versus privately insured patients as a reason to maintain segregation. It is important, hospitals believe, to attract as many privately paying patients as possible—through nicer facilities and fully credentialed providers—to offset the costs of caring for publicly insured patients. Institutions truly committed to eliminating health disparities ought to lobby for changes in New York State's funding policies and the federal government's funding policies. Also, just as federal dollars are denied to health systems that practice *de jure* racial segregation, federal dollars could be denied to health systems that practice *de facto* racial segregation via insurance status. Ultimately, segregated care will only end when it becomes costlier

to maintain a segregated system than to integrate. New York's government and the federal government should help make this a reality and stakeholders on the ground should help hospital systems understand the monetary and social costs already associated with a segregated health care system.

Importantly, the fight to integrate healthcare in the United States has a long history. While the landscape may be different, the basic premise is the same: care can never be both separate and equal.

Endnotes

1. "Medicaid Coverage Rates for the Nonelderly by Race/Ethnicity," Henry J. Kaiser Family Foundation, n.d.. https://www.kff.org/medicaid/state-indicator/rate-by-raceethnicity-3/?currentTimeframe=1&sortModel={"colId":"Location","sort":"asc"}.

2. Martha Hostetter and Sarah Klein, "In Focus: Reducing Racial Disparities in Health Care by Confronting Racism," *Commonwealth Fund*, September 27, 2018. https://www.commonwealthfund.org/publications/newsletter-article/2018/sep/focus-reducing-racial-disparities-health-care-confronting; Elizabeth A Howell et al., "Black-White Differences in Severe Maternal Morbidity and Site of Care," American Journal of Obstetrics and Gynecology 214, no. 1 (2016): 121–27. https://doi.org/10.1016/j.ajog.2015.08.019.

3. Harriet A. Washington, *Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present* (New York: Anchor Books, 2006). https://www.amazon.com/Medical-Apartheid-Experimentation-Americans-Colonial/dp/076791547X.

4. Washington, *Medical Apartheid*.

5. J. Marion Sims, *The Story of My Life* (New York: D. Appleton and company, 1884). https://archive.org/details/storyofmylif00sims/page/n4/mode/2up.

6. Kelly M. Hoffman et al., "Racial Bias in Pain Assessment and Treatment Recommendations, and False Beliefs about Biological Differences between Blacks and Whites," *Proceedings of the National Academy of Sciences* 113, no. 16 (April 2016): 4296–4301. https://doi.org/10.1073/pnas.1516047113.

7. David B. Smith, *The Power to Heal: Civil Rights, Medicare, and the Struggle to Transform America's Health Care System* (Nashville: Vanderbilt University Press, 2016). https://www.amazon.com/Power-Heal-Medicare-Struggle-Transform/dp/082652107X.

8. Washington, *Medical Apartheid*.

9. Smith, The Power to Heal.

10. Ibid.

11. Harriet A. Washington, "Apology Shines Light on Racial Schism in Medicine," *New York Times*, 29 July 2008. https://www.nytimes.com/2008/07/29/health/views/29essa.html.

12. Smith, *The Power to Heal*.

13. Ibid.

14. Ibid.

15. Ibid.

16. Ibid.

17. Ibid.

18. Ibid.

19. Ibid.

20. Ibid.

21. Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House* (Berkeley, CA: Crossing Press, 1984).   https://collectiveliberation.org/wp-content/uploads/2013/01/Lorde_The_Masters_Tools.pdf.

22. Denisse Rojas and Hazel Lever, "Segregated Care and Wait Times," Unpublished Data. 2015.

23. Zina Huxley-Reicher et al. "Impact of Segregated Care on Medical Student Education," Unpublished Data. 2018.

24. "About," NYC Coalition to Dismantle Racism in the Health System, n.d. https://nyccoalitiontodismantleracism.wordpress.com/about-2/.

"Vilify Them Night After Night": Anti-Black Drug Policies, Mass Incarceration, and Pathways Forward

Victor J. St. John and Vanessa Lewis

Victor J. St. John is a fifth-year criminal justice PhD candidate at the CUNY Graduate Center / John Jay College of Criminal Justice. St. John served as the first African American director of research and analysis for NYC's Board of Correction. His areas of research include race and justice, corrections, reentry, criminal justice architecture, and justice policy.

Vanessa is a first-year master of accountancy student at George Washington University. Lewis' professional experience includes the managing of finances within the private and public sector. Her interests are related to Native American and Black communities' access to financial resources.

Abstract

As of 2019, Black people made up 13 percent of the US population, but 40 percent of people incarcerated in jails and prisons. This article provides a historical account of the War on Drugs in the United States between the eras of President Richard Nixon and President Ronald Reagan, highlighting the anti-Black intent behind drug policies that were passed during this time. Additionally, the article includes a review of the impact that these criminal justice responses had on the creation of the present-day mass incarceration issue in the United States. Moreover, recommendations for the review, repeal, and codification of protective laws are proposed, as well as the utilization of unifying campaigns to dismantle and prevent anti-Black policies and practices.

Introduction

Anti-Black, in the simplest definition, is the opposition to or hostility towards people who are Black,[1] or the othering or denial of people who are Black as human beings.[2] The transferring of either this disregard or animus into government strategies and plans for the public is best understood as an anti-Black policy. The mere rejection of strategies that are aimed at removing the exploitation

or unfair and inequitable treatment of people who are Black also falls under this umbrella. Inversely, pro-Black policies support legislation and rules aimed to create equity and fairness for people who are Black.[3] Research yields that proponents of anti-Black policy are historically and statistically associated with various characteristics, including: a) being supportive of segregation; b) having a conservative political ideology; c) disapproving of the strategies that are used to bring fairness and equity to the political agenda (e.g., certain activist movements); d) being White; and e) lacking explicit and implicit feelings of "closeness" or affinity towards people who are Black.[4]

Today, the US criminal justice system's response to crime disproportionately impacts and harms people who are Black,[5] evoking concern about the anti-Black nature of the justice system.[6] The "War on Drugs" in the U.S. is a notorious example of: a) the way anti-Black policies create systemic racism; and b) how anti-Black legislation left unchanged may exacerbate anti-Black policies in subsequent administrations. This war is particularly understood as a catalyst for the funneling of Black people into penal institutions[7]—an issue that continues to disproportionately impact the lives of Black people and communities densely populated with Black people.[8] This article delineates the development of anti-Black criminal justice policies, as well as the impact that such policies had on Black people, specifically through a historical account of the War on Drugs. The article concludes with several recommendations on how to reduce the prevalence of anti-Black policies and how to prevent anti-Black policies from being established.

Setting the Stage for Mass Incarceration: The War on Drugs Policies

Nixon's Igniting of the War

"You want to know what this was really all about? The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and Black people. You understand what I'm saying. We knew we couldn't make it illegal to be either against the war or Black, but by getting the public to associate the hippies with marijuana and Blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course, we did."[9]

—John Ehrlichman,
Counsel and Assistant to the President for Domestic Affairs under Nixon

The quotation above underscores the anti-Black intent behind policies that emerged from the U.S. federal government in the 1970s. President Richard Nixon's top aide John Ehrlichman stated the tough legislation on drugs that began

Anti-Black, in the simplest definition, is the opposition to, or hostility towards people who are Black, or the othering or denial of people who are Black as human beings. The transferring of either this disregard or animus into government strategies and plans for the public is best understood as an anti-Black policy.

under the Nixon administration was created, in part, to negatively impact the lives of Black people.[10] Specifically, in 1971 drug abuse became "public enemy number one"

> *Carter expressed the need to decriminalize low level marijuana offenses in his presidential campaign, arguing that 'penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself.'*

under Nixon, launching the start of what is commonly understood as the War on Drugs.[11] Publicly, Nixon would go on to use research to justify this war, citing Dr. Richard Dupont's research study on incarcerated people in D.C., which argued drugs were linked to crime rates.[12]

During Nixon's presidency, Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970 which included as Title II the Controlled Substances Act (CSA).[13] This act combined previous federal anti-drug policies under

> *To see those, those monkeys from those African countries—damn them, they're still uncomfortable wearing shoes!*

one legislation and placed marijuana in the most restrictive class, Schedule I, which remains highly controversial due to a lack of scientific support.[14] For the first time in US history, there was a single system of control for both narcotic and psychotropic drugs. Moreover, in 1973, President Nixon ramped up his efforts to tackle drug use in America through the introduction of the Drug Enforcement Agency (DEA).[15] The DEA was established with the sole purpose of enforcing drug-related laws and regulations. However, the DEA primarily targeted people of color—even though White individuals were just as likely to possess drugs—setting the stage for an overwhelming number of arrested and imprisoned racial minorities.[16]

Ford's Perpetuation of the War

The pressure for strict anti-drug policies during Nixon's presidency continued throughout Gerald Ford's presidency, which began in 1974. In 1975, the Ford administration released a report on drug abuse, recommending that federal agencies shift their focus towards: a) drugs that are most harmful to individuals and society and b) compulsive users of any drug.[17] Specifically, the report identified heroin, amphetamines, and barbiturates as the drugs posing the highest risk.[18] President Ford continued the rhetoric of the war, stating in a special message to congress that "we had not won the war on drugs."[19] Here, Ford expressed the need for more aggressive campaigns against drugs and urged the White House Domestic Policy Council to review and assess whether the federal drug abuse prevention, treatment and law enforcement strategies were effective.[20] In 1976, Ford introduced the Narcotic Sentencing and Seizure Act, which would have enacted mandatory minimum penalties on individuals related to the distribution, transportation, and manufacture of opiates.[21] The proposal was rejected.

Carter's Attempt to Transform the War

The momentum behind the War on Drugs at the federal level curtailed in 1977 when President Jimmy Carter shared his own interpretation of the war. Carter expressed the need to decriminalize low level marijuana offenses in his presidential campaign, arguing that "penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself."[22] He also supported the National Institute on Drug Abuse in advancing more programs to impede drug use, provide rehabilitation services, and develop job training programs for recovering addicts.[23] In 1977, Dr. Peter Bourne, an advocate for decriminalizing marijuana, was chosen by Carter to direct the Office of Drug Abuse Policy.[24] As the director, Bourne provided policy guidance and monitored the performance of drug abuse prevention efforts by federal departments and agencies. Additionally, Bourne expressed his view that criminal penalties were neither effective nor appropriate to fight drug use[25] and President Carter's administration sought to follow this notion, starting out by requesting that Congress vote to decriminalize the possession of up to an ounce of marijuana. However, efforts to reform drug policies were put on hold after a scandal surrounding Bourne's alleged use of cocaine and marijuana was publicized.[26]

Reagan's Reignition of the War

"To see those, those monkeys from those African countries—damn them, they're still uncomfortable wearing shoes!"[27] This quotation captures a conversation in 1971 between then President Nixon and future President

Ronald Reagan, highlighting an existing relationship between two prominent figures who would escalate mass incarceration in the United States. This conversation also illustrates the racist sentiments and language wielded by policy makers who would help shape the trajectory of disproportionately sending Black people to jail and prison in the United States.

President Ronald Reagan ratcheted up the War on Drugs from 1981-1989. The administration enforced several policies that aimed to deter drug-related violence by enforcing fixed and extended prison sentencing.[28] Counts of people incarcerated for non-violent drug offenses spiked from 50,000 in

1980 to over 400,000 by 1997.[29] The Anti-Drug Abuse Act of 1986 is credited with the uptick in people placed behind bars. The act required mandatory minimum penalties for cocaine-related offenses based on the quantity and type of drug, and differentiated between crack and powder cocaine.[30] Specifically, there was a minimum sentence of five years for possessing five grams of crack, which contributed to high rates of incarceration of Black people for nonviolent drug offenses.[31] The purer, more expensive, and least accessible form of the drug—cocaine—would require the possession of 500 grams to trigger the five-year minimum sentence.[32] At the time, approximately 80 percent of crack users were Black and the majority of cocaine users were White.[33] Scholars argue that this difference in sentencing was enacted to punish Black drug users more harshly than their White counterparts through targeting a drug predominantly used by Black people.[34] This sentencing practice gained heightened scrutiny by justice officials in the 1990s.[35]

Ramifications of the War

The war on drugs brought harsh sentencing laws and heavy policing of predominantly Black communities, setting the stage for an influx of individuals—disproportionately

> *[I]t is imperative that anti-Black policies and practices, whether used actively or not, are identified, removed, and replaced with protective policies that disallow their revival.*

Black people—into US penal institutions. The number of people under the U.S. correctional system grew tremendously between 1980 and 2016, with a 356 percent increase in the amount of people in prison, a 303 percent increase in persons held in jail, a 297 percent increase in persons on parole, and a 229 percent increase in persons on probation.[36] Figure I and II reflect public data from the US Bureau of Justice Statistics to illustrate the increase in correctional populations over time.

As of 2019, almost 2.3 million people are incarcerated in the United States, with one in five persons incarcerated for a drug charge. 40 percent of the people who are incarcerated are Black despite Black people making up only 13 percent of the US population[37]—an overrepresentation present in all U.S. states.

Picking Up the Pieces and Addressing Anti-Black Policies

Admittedly, an extensive analysis of the ramifications of anti-Black policies often requires bounding into lengthier books[38] and is beyond the word count of this article. Nonetheless, the War on Drugs in America provides a case study for understanding anti-Black policy in the criminal justice sector. Though Nixon's racist intent behind the anti-Black policies set forth in the 1970s has been referenced, intent is not a necessity for a policy to be anti-Black, and it is not a necessity to demand a resolution. That is, regardless of the purpose behind a policy or group of policies, outcomes that demonstrate harmful, inhumane and differential treatment of Black people require remedy.[39] This final section proposes two ways in which anti-Black policies can be stymied and prevented, including: a) the creation of protective laws and implementation of systematic reviews and b) the use of unifying campaigns.
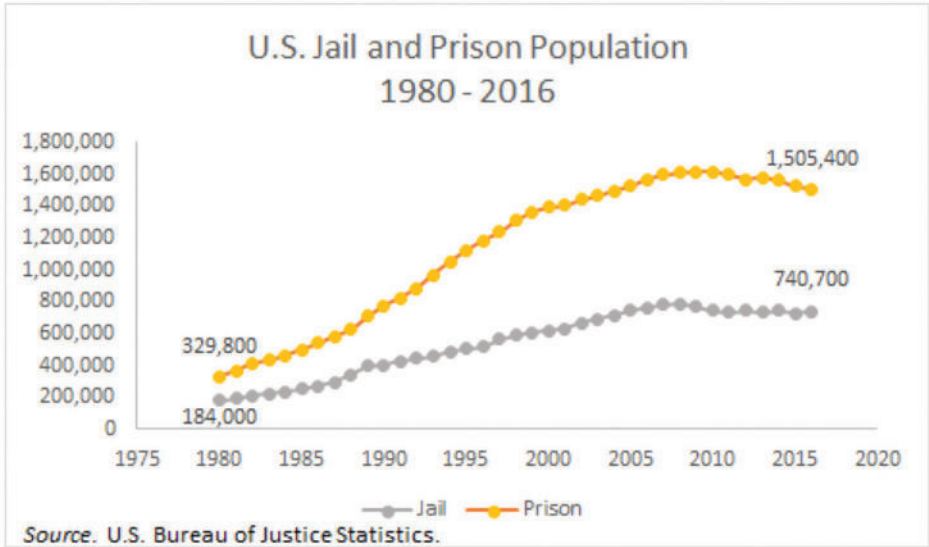
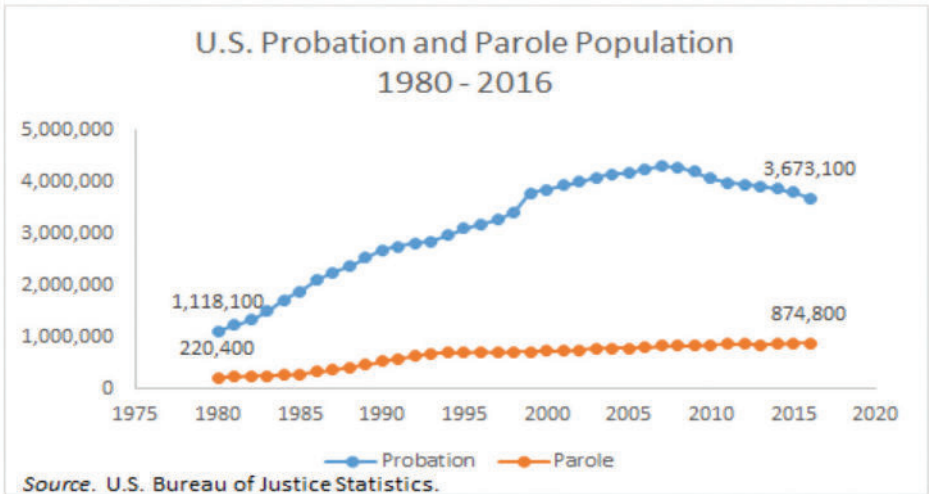Figure I. U.S. Jail and Prison Population between 1980 and 2016

Figure II. U.S Probation and Parole Population between 1980 and 2016

Table I. Proportion of People Who are Black by State:
State Population vs State Prison and Jail Population, 2010

State	State Population	Prison and Jail Population	% Difference
WA	4%	18%	14%
OR	2%	10%	8%
CA	6%	27%	21%
ID	1%	3%	2%
NV	8%	29%	21%
AZ	4%	12%	8%
UT	1%	6%	5%
MT	0%	3%	3%
WY	1%	4%	3%
CO	4%	18%	14%
NM	2%	6%	4%
ND	1%	5%	4%
SD	1%	8%	7%
NE	5%	25%	20%
KS	6%	31%	25%
OK	7%	27%	20%
TX	12%	32%	20%
MN	5%	31%	26%
IA	3%	23%	20%
MO	12%	39%	27%
AR	15%	42%	27%
LA	32%	66%	34%
AK	3%	7%	4%
HI	2%	4%	2%
WI	6%	38%	32%
IL	15%	56%	41%
KY	8%	29%	21%
TN	17%	44%	27%
MS	37%	57%	20%
AL	26%	54%	28%
IN	9%	34%	25%
MI	14%	49%	35%
OH	12%	43%	31%
GA	31%	58%	27%
FL	16%	46%	30%
WV	3%	28%	25%
VA	19%	58%	39%
NC	22%	55%	33%
SC	28%	62%	34%
PA	11%	46%	35%
NY	16%	53%	37%
MD	29%	68%	39%
DE	21%	60%	39%
NJ	14%	54%	40%
RI	6%	30%	24%
CT	10%	41%	31%
MA	7%	26%	19%
VT	1%	9%	8%
NH	1%	7%	6%
ME	1%	7%	6%

Source. Prison Policy Initiative

Protective Laws and Systematic Reviews

In the 1970s, unchecked policies and practices under the Nixon administration that allowed for the unfair treatment of Black people were later pivotal in President Reagan's harming of Black people through the criminal justice system. Thus, it is imperative that anti-Black policies and practices, whether used actively or not, are identified, removed, and replaced with protective policies that disallow their revival. For example, in 2019 US Senators Cory Booker, Kamala Harris, and Tim Scott led a bipartisan effort to pass the Justice for Victims of Lynching Act, making lynching, a practice commonly symbolic of anti-Black racism in America, a federal hate crime.[40] Given the anti-Black history of the United States., policy makers should invest more time, finances, and resources into identifying practices and policies that allow for hateful, differential, or dehumanizing treatment of a person based on their race. Moreover, one approach to dismantling policies and practices before they are enacted is to use disparate impact reviews. A disparate impact review occurs when a committee composed of stakeholders who are external and internal to a governing body are charged with systematically reviewing policies and practices that may have a disparate impact on specific racial groups. Reviews for disparate impact or screenings for prejudice have been suggested as a way to curb the unfair treatment of racial minorities in the justice system.[41]

Unifying Campaigns

Throughout history, legislation promoting the liberation and fair treatment of Black people in the United States came about as a result of the pressures from war, protests, riots, and the leveraging of legal and political systems.[42] Regardless of the methods used to bring the topic of discrimination as well as

> *That is, regardless of the purpose behind a policy or group of policies, outcomes that demonstrate harmful, inhumane and differential treatment of Black people require remedy.*

anti-Black policies and practices to the forefront, it is important to unify people who are interested in addressing these issues. The theme of unity is always present and central to social change.[43] Notably, in the 1950s and 1960s this call for a collective consciousness around anti-Black issues echoed throughout the Civil Rights Movement in the United States.[44] Additionally, leaders of the time also understood the importance of the unification of social classes, irrespective of race, when addressing anti-Black policies and influencing public sentiment.[45]

Today is no different, and campaigns that aim to unify people who seek to remove policies that treat humans differently based on the color of their skin are important. Unification may present itself differently in the year 2020, with pop culture[46] as well as social media being a primary tool for gathering people behind a cause and catapulting an issue to the top of policy making agendas.[47] Unifying campaigns should leverage access to the media, technology, and transportation to breakdown the othering of people who are Black by: a) rallying behind the removal of and protection against anti-Black policies and b) fostering in-person and electronic interactions (e.g., dialogue) with people

who have yet to understand that individuals who are Black deserve to be treated by the criminal justice system fairly, equitably, humanely, and with empathy.

Endnotes

1. Merriam Webster, "AntiBlack." (2019). Available from https://www.merriam-webster.com/dictionary/antiBlack

2. Michael J. Dumas, "Against the Dark: Antiblackness in Education Policy and Discourse," *Theory into Practice* 55, no. 1 (2016): 11-19. https://www.researchgate.net/publication/286402485_Against_the_Dark_Antiblackness_in_Education_Policy_and_Discourse

3. Thomas Craemer, "Non-Conscious Feelings of Closeness Toward African Americans and Support for Pro-Black Policies," *Political Psychology* 29, no. 3 (2008): 407-436. https://www.researchgate.net/publication/230004690_Non-Conscious_Feelings_of_Closeness_Toward_African_Americans_and_Support_for_Pro-Black_policies

4. Lawrence Bobo, "Attitudes Toward the Black Political Movement: Trends, Meaning, and Effects on Racial Policy Preferences," *Social Psychology Quarterly* 51, no. 4 (1988): 287-302. https://www.researchgate.net/publication/245549615_Attitudes_Toward_the_Black_Political_Movement_Trends_Meaning_and_Effects_on_Racial_Policy_Preferences; Craemer, "Nonconscious Feelings of Closeness"; David O. Sears et al. *Racialized politics: The debate about racism in America* (Chicago: University of Chicago Press, 2000). https://www.amazon.com/Racialized-Politics-America-Studies-Communication/dp/0226744078

5. Marcus Bell, "Criminalization of Blackness: Systemic racism and the Reproduction of Racial Inequality in the US Criminal Justice System," *Systemic Racism* (New York: Palgrave Macmillan, 2017), 163-183. https://link.springer.com/book/10.1057/978-1-137-59410-5; Shaun Gabbidon, Criminological Perspectives on Race and Crime (New York: Routledge, 2015). https://www.amazon.com/Criminological-Perspectives-Criminology-Justice-Studies/dp/1138826626; Delores Jones-Brown et al. "The Significance of Race in Contemporary Urban Policing Policy*," US Criminal Justice Policy: A Contemporary Reader* (Sudbury, MA : Jones & Bartlett Learning, 2011), 21.; "U.S. criminal justice policy : a contemporary reader," Stanford Libraries, n.d. https://searchworks.stanford.edu/view/8791188; Vernetta D. Young and Rebecca Reviere, "Black Club Women and the Establishment of Juvenile Justice Institutions for Colored Children: A Black Feminist Approach," *Western Journal of Black Studies* 39, no. 2 (2015). https://www.questia.com/library/journal/1G1-428998150/black-club-women-and-the-establishment-of-juvenile; Ruth D. Peterson, "Interrogating Race, Crime, And Justice in a Time of Unease and Racial Tension," *Criminology* 55, no. 2 (2017): 245-272. https://www.researchgate.net/publication/316532097_INTERROGATING_RACE_CRIME_AND_JUSTICE_IN_A_TIME_OF_UNEASE_AND_RACIAL_TENSION_RACE_CRIME_AND_JUSTICE_IN_A_TIME_OF_UNEASE; Victor J. St John and Kwan-Lamar Blount-Hill, "Place, Space, Race, and Life During and After Incarceration: Dismantling Mass Incarceration Through Spatial and Placial Justice," *Harvard Kennedy School Journal of African American Policy* (2019): 46-54.

https://hjaap.hkspublications.org/wp-content/uploads/sites/14/2019/05/HJAAP19.pdf.

6. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012). https://www.amazon.com/New-Jim-Crow-Incarceration-Colorblindness/dp/1595586431; Janos Marton, "# CLOSERikers: The Campaign to Transform New York City's Criminal Justice System," *Fordham Urban Law Journal* 45, no. 2 (2017): 499. https://ir.lawnet.fordham.edu/ulj/vol45/iss2/5/.; Douglas McDonald and Kenneth E. Carlson, "Sentencing in the Federal Courts: Does Race Matter?" *US Department of Justice* (1993). https://www.ncjrs.gov/pdffiles1/Digitization/145328NCJRS.pdf.; Michael Tonry, "Racial Politics, Racial Disparities, and the War On Crime," *Crime & Delinquency* 40, no. 4 (1994): 475-494. https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=158549; Bryan Warde, "Black Male Disproportionality in the Criminal Justice Systems of the USA, Canada, and England: A Comparative Analysis of Incarceration." *Journal of African American Studies* 17, no. 4 (2013): 461-479. https://link.springer.com/article/10.1007/s12111-012-9235-0.

7. Arthur Benavie, Drugs: *America's Holy War* (New York: Routledge, 2012). https://www.amazon.com/Drugs-Americas-Holy-Arthur-Benavie/dp/0789038412.; Cigdem V. Sirin, "From Nixon's War on Drugs to Obama's Drug Policies Today: Presidential Progress in Addressing Racial Injustices and Disparities," *Race, Gender & Class* 18, no. 3/4 (2011): 82-99. https://www.jstor.org/stable/43496834?seq=1

8. Alexander, *The New Jim Crow.*; Elizabeth Hinton, From the War on Poverty to the War on Crime (Cambridge, MA: Harvard University Press, 2016). https://www.amazon.com/War-Poverty-Crime-Incarceration-America/dp/0674737237.; John F. Pfaff, "The War on Drugs and Prison Growth: Limited Importance, Limited Legislative Options," *Harvard Journal on Legislation* 52, no. 1 (2015): 173. https://www.researchgate.net/publication/283019717_The_war_on_drugs_and_prison_growth_Limited_importance_limited_legislative_options; Victor St. John, "Probation and Race in the 1980s: A Quantitative Examination of Felonious Rearrests and Minority Threat Theory," *Race and Social Problems* 11(2019): 1-10. https://www.researchgate.net/publication/333707882_Probation_and_Race_in_the_1980s_A_Quantitative_Examination_of_Felonious_Rearrests_and_Minority_Threat_Theory

9. Tony Newman and Anthony Papa, "Top Advisor to Richard Nixon Admitted that War on Drugs was Policy Tool to Go After Anti-War Protesters and 'Black People," *Drug Policy Alliance*, 22 March 2016, http://www.drugpolicy.org/press-release/2016/03/top-adviser-richard-nixon-admitted-war-drugs-was-policy-tool-go-after-anti

10. Newman and Papa, "Top Advisor to Richard Nixon"

11. Molly Niesen, "Public Enemy Number One: The US Advertising Council's First Drug Abuse Prevention Campaign," *Substance Use & Misuse* 46, no. 7 (2011): 872-881. https://www.ncbi.nlm.nih.gov/pubmed/21599502

12. Mical Raz, "Treating Addiction or Reducing Crime? Methadone Maintenance and Drug Policy Under the Nixon Administration," *Journal of Policy History* 29, no. 1 (2017): 58-86. https://www.cambridge.org/core/journals/journal-of-policy-history/article/treating-addiction-or-reducing-crime-methadone-maintenance-and-drug-policy-under-the-nixon-administration/5C7779395D4B4AC7ECAB77F5D91BA455.

13. David T. Courtwright, "The Controlled Substances Act: How a 'Big Tent' Reform Became a Punitive Drug Law," *Drug and Alcohol Dependence* 76, no. 1 (2004): 9-15. https://www.sciencedirect.com/science/article/abs/pii/S037687160400122X.

14. David Downs, "The Science Behind the DEA's Long War on Marijuana," *Scientific American*, 19 April 2016. http://www.scientificamerican.com/article/the-science-behind-the-dea-s-long-war-on-marijuana.; Ira P. Robbins, "Guns N' Ganja: How Federalism Criminalizes the Lawful Use of Marijuana" *UC Davis Law Review* 51, no. 5 (2017): 1783. https://lawreview.law.ucdavis.edu/issues/51/5/Articles/51-5_Robbins.pdf.

15. "The DEA Years," *Drug Enforcement Administration*, n.d. https://www.dea.gov/sites/default/files/2018-07/1970-1975%20p%2030-39.pdf

16. "A Brief History of the Drug War," *Drug Policy Alliance*, (n.d.). http://www.drugpolicy.org/issues/brief-history-drug-war; "A Brief History of the Drug War," *Drug Policy Alliance.*; Cigdem V. Sirin, "From Nixon's War on Drugs to Obama's Drug Policies Today: Presidential Progress in Addressing Racial Injustices and Disparities," *Race, Gender & Class* 18, no. 3/4 (2011): 82-99. https://www.jstor.org/stable/43496834?seq=1

17. Pedro Ruiz and Eric Strain, *Lowinson and Ruiz's Substance Abuse: A Comprehensive Textbook* (Philadelphia, PA: Lipincott Williams & Wilkins, 2005). https://www.amazon.com/Lowinson-Ruizs-Substance-Abuse-Comprehensive/dp/1605472778.; "White Paper on Drug Abuse," The White House, 14 October 1975. https://www.fordlibrarymuseum.gov/library/document/0248/whpr19751014-009.pdf

18. "White Paper on Drug Abuse," The White House

19. Gerald Ford, "Special Message to the Congress on Drug Abuse," *The American Presidency Project*, 27 April 1976. https://www.presidency.ucsb.edu/node/257419.

20. Gerald Ford, "Special Message to the Congress on Drug Abuse"; Kasey C. Phillips, "Drug War Madness: A Call for Consistency Amidst the Conflict," *Chapman Law Review* 13, no. 3 (2010): 645. https://digitalcommons.chapman.edu/chapman-law-review/vol13/iss3/6/.

21. H.R. 13980 — 94th Congress: Narcotic Sentencing and Seizure Act 1976. https://www.govtrack.us/congress/bills/94/hr13980

22. James Wooten, "Carter Seeks to End Marijuana Penalty for Small Amounts," *New York Times*, 3 August 1977. https://www.nytimes.com/1977/08/03/archives/carter-seeks-to-end-marijuana-penalty-for-small-amounts-urges-fines.html.

23. Michael F. Walther, "Insanity: Four Decades of US Counterdrug Strategy," US Army War College,

1 December 2012. https://www.jstor.org/stable/res-rep11872?seq=1#metadata_info_tab_contents.

24. Claire D. Clark and Emily Dufton, "Peter Bourne's Drug Policy and the Perils of a Public Health Ethic, 1976–1978," *American Journal of Public Health* 105, no. 2 (2015): 283-292. https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2014.302233.

25. "Carter Asks Congress to Decriminalize Marijuana Possession," *New York Times*, 15 March 1977. https://www.nytimes.com/1977/03/15/archives/carter-asks-congress-to-decriminalize-marijuana-possession-cocaine.html.; Clark and Dufton. "Peter Bourne's Drug Policy"

26. Phillips, "Drug war madness"

27. Tim Naftali, "Ronald Reagan's Long-Hidden Racist Conversation with Richard Nixon," *Atlantic*, 30 July 2019. https://www.theatlantic.com/ideas/archive/2019/07/ronald-reagans-racist-conversation-richard-nixon/595102/

28. Alfred Blumstein and Allen J. Beck, "Population Growth in US Prisons, 1980-1996," *Crime and Justice* 26 (1999): 17-61. https://www.jstor.org/stable/1147683?seq=1; Walker Newell, "The Legacy of Nixon, Reagan, and Horton: How the Tough on Crime Movement Enabled a New Regime of Race-Influenced Employment Discrimination," *Berkeley Journal of African-American Law & Policy* 15 (2013): 3. https://heinonline.org/HOL/LandingPage?handle=hein.journals/afamlpol15&div=5&id=&page=.

29. Adam Augustyn et al. "War on Drug," Britannica. https://www.britannica.com/topic/war-on-drugs.

30. Tony Newman, "Nancy Reagan's Role in the Disastrous War on Drugs," *Drug Policy Alliance*, 6 March 2016. http://www.drugpolicy.org/blog/nancy-reagans-role-disastrous-war-drugs

31. Newman, "Nancy Reagan's Role in the Disastrous War on Drugs"

32. Allison T. Chappell and Scott R. Maggard, "Applying Black's Theory of Law to Crack and Cocaine Dispositions," *International Journal of Offender Therapy and Comparative Criminology* 51, no. 3 (2007): 264-278. https://www.ncbi.nlm.nih.gov/pubmed/17478858.

33. Augustyn, "War on Drugs"

34. Douglas McDonald and Kenneth E. Carlson, "Sentencing in the Federal Courts: Does Race Matter?" *US Department of Justice* (1993). https://www.ncjrs.gov/pdffiles1/Digitization/145328NCJRS.pdf.; Michael Tonry, "Racial Politics, Racial Disparities, and the War On Crime," *Crime & Delinquency* 40, no. 4 (1994): 475-494. https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=158549.

35. "Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System," *U.S. Sentencing Commission*, August 1991. https://www.ncjrs.gov/pdffiles1/Digitization/137910NCJRS.pdf.

36. Bureau of Justice Statistics. (n.d.). Key Statistics: Jail Inmates. Department of Justice.

37. Wendy Sawyer and Peter Wagner, "Mass Incarceration: The Whole Pie 2019," *Prison Policy Initiative*, 19 March 2019. https://www.prisonpolicy.org/reports/pie2019.html.

38. Dan Baum, *Smoke and Mirrors: The War on Drugs and the Politics of Failure* (Boston: Little, Brown, and Company, 1996). https://www.amazon.com/Smoke-Mirrors-Drugs-Politics-Failure/dp/0316084468.; Arthur Benavie, Drugs: America's Holy War (New York: Routledge, 2012). https://www.amazon.com/Drugs-Americas-Holy-Arthur-Benavie/dp/0789038412.; Elizabeth Hinton, *From the War on Poverty to the War on Crime* (Cambridge, MA: Harvard University Press, 2016). https://www.amazon.com/War-Poverty-Crime-Incarceration-America/dp/0674737237.

39. Yarimar Bonilla and Jonathan Rosa, "# Ferguson: Digital Protest, Hashtag Ethnography, and the Racial Politics of Social Media in the United States," *Journal of the American Ethnological Society* 42, no. 1 (2015): 4-17. https://anthrosource.onlinelibrary.wiley.com/doi/abs/10.1111/amet.12112.; Nikita Carney, "All Lives Matter, But So Does Race: Black Lives Matter and the Evolving Role of Social Media," *Humanity & Society* 40, no. 2 (2016): 180-199. https://www.researchgate.net/publication/301310750_All_Lives_Matter_but_so_Does_Race_Black_Lives_Matter_and_the_Evolving_Role_of_Social_Media.; Russell Rickford, "Black Lives Matter: Toward a Modern Practice of Mass Struggle," *New Labor Forum* 25, no. 1 (2016): 34-42. https://www.researchgate.net/publication/286509935_Black_Lives_Matter_Toward_a_Modern_Practice_of_Mass_Struggle.; Christopher J. Lebron, *The Making of Black Lives Matter: A Brief History of an Idea* (New York: Oxford University Press, 2017). https://www.amazon.com/Making-Black-Lives-Matter-History/dp/0190601345.

40. S.488 - Justice for Victims of Lynching Act of 2019. https://www.congress.gov/bill/116th-congress/senate-bill/488/all-info.

41. Regina A. Schuller and Veronica Kazoleas and Kerry Kawakami, "The Impact of Prejudice Screening Procedures on Racial Bias in the Courtroom," *Law and Human Behavior* 33, no. 4 (2009): 320-328. https://link.springer.com/article/10.1007/s10979-008-9153-9.; "Reforming Juvenile Justice: A Developmental Approach," National Research Council, 2013. http://www.njjn.org/uploads/digital-library/Reforming_Juv-Justice_NationalAcademySciences.pdf.; Victor J. St. John, Kelly Murphy, and Akiva Liberman, "Recommendations for Addressing Racial Bias in Risk and Needs Assessment in the Juvenile Justice System," *Child Trends*, 14 January 2020. https://www.childtrends.org/publications/recommendations-for-addressing-racial-bias-in-risk-and-needs-assessment-in-the-juvenile-justice-system

42. John H. Franklin and Evelyn B. Higginbotham, *From Slavery to Freedom* (New York: McGraw-Hill, 12011). https://www.amazon.com/Slavery-Freedom-History-African-Americans/dp/0072963786.; James A. Geschwender, "Civil Rights Protests and Riots: A Disappearing Distinction," *Social Science Quarterly* 49, no. 3 (1968): 474. https://www.jstor.org/stable/42858409?seq=1.; David Jacobs and Ronald Helms, "Racial Politics and Redistribution:

Isolating the Contingent Influence of Civil Rights, Riots, and Crime on Tax Progressivity," *Social Forces* 80, no. 1 (2001): 91-121. https://www.jstor.org/stable/2675533?seq=1.; Michael Vorenberg, *Final Freedom: The Civil War, The Abolition of Slavery, and the Thirteenth Amendment* (Cambridge, United Kingdom: Cambridge University Press, 2001). https://www.cambridge.org/core/books/final-freedom/45C6C7D-32B92EB539185819556404405

43. Laurent Dubois, *A Colony of Citizens: Revolution and Slave Emancipation in the French Caribbean, 1787-1804* (Chapel Hill, NC: UNC Press Books, 2012). https://www.amazon.com/Colony-Citizens-Revolution-Emancipation-Caribbean/dp/0807855367.; Karl Marx and Friedrich Engels, The Communist Manifesto (New York: Penguin, 2002). https://www.amazon.com/Communist-Manifesto-Penguin-Classics/dp/0140447571.

44. William W. Sales, Jr. and William W. Sales, *From Civil Rights to Black Liberation: Malcolm X and the Organization of Afro-American Unity* (Boston, MA: South End Press, 1994). https://www.amazon.com/Civil-Rights-Black-Liberation-Organization/dp/0896084809.

45. Adam Fairclough, "Martin Luther King, Jr. and the War in Vietnam," *Phylon* 45, no. 1 (1984): 19-39. https://www.jstor.org/stable/274976?seq=1.

46. Bettina L. Love, "Good Kids, Mad Cities: Kendrick Lamar and Finding Inner Resistance in Response to FergusonUSA," *Cultural Studies Critical Methodologies* 16, no. 3 (2016): 320-323. https://journals.sagepub.com/doi/abs/10.1177/1532708616634837.

47. Yarimar Bonilla and Jonathan Rosa, "# Ferguson: Digital Protest, Hashtag Ethnography, and the Racial Politics of Social Media in the United States," *Journal of the American Ethnological Society* 42, no. 1 (2015): 4-17. https://anthrosource.onlinelibrary.wiley.com/doi/abs/10.1111/amet.12112.; Nikita Carney, "All Lives Matter, But So Does Race: Black Lives Matter and the Evolving Role of Social Media," Humanity & Society 40, no. 2 (2016): 180-199. https://www.researchgate.net/publication/301310750_All_Lives_Matter_but_so_Does_Race_Black_Lives_Matter_and_the_Evolving_Role_of_Social_Media.; Christopher J. Lebron, *The Making of Black Lives Matter: A Brief History of an Idea* (New York: Oxford University Press, 2017). https://www.amazon.com/Making-Black-Lives-Matter-History/dp/0190601345.; Janos Marton, "# CLOSERikers: The Campaign to Transform New York City's Criminal Justice System," Fordham Urban Law Journal 45, no. 2 (2017): 499. https://ir.lawnet.fordham.edu/ulj/vol45/iss2/5/.; Russell Rickford, "Black Lives Matter: Toward a Modern Practice of Mass Struggle," *New Labor Forum* 25, no. 1 (2016): 34-42. https://www.researchgate.net/publication/286509935_Black_Lives_Matter_Toward_a_Modern_Practice_of_Mass_Struggle.

Automated Anti-Blackness: Facial Recognition in Brooklyn, New York

Mutale Nkonde

Mutale Nkonde is the founding CEO of AI for the People (AFP), a nonprofit creative agency. Only 1.4 percent of researchers working in public interest tech are Black. AFP's mission is to increase Black representation in the field of public interest tech by 2030 by using journalism, television, film and music to challenge dominant narratives about the assumed neutrality of advanced technological systems. Prior to her work with AFP, Nkonde worked in AI Governance. During that time, she was part of the team that introduced the Algorithmic and Deep Fakes Algorithmic Acts, as well as the No Biometric Barriers to Housing Act to the United States House of Representatives. She started her career as a broadcast journalist and worked at the BBC, CNN & ABC. She also writes widely on race and tech, as well as holds fellowships at Harvard and Stanford.

It is a cold windy night in mid-November when I arrive at Atlantic Towers in the Brownsville section of Brooklyn, New York. Atlantic Plaza Towers is made up of 718 rent-controlled units spanning two buildings that sit side by side facing Atlantic Avenue, a major thruway connecting East Brooklyn and Queens.[1] Atlantic Plaza Towers is owned by the Nelson Management Group (NMG), a property management company that manages 13 apartment buildings across New York City.[2]

I am here to meet Tranae' Moran and Fabian Rogers. Moran's family has lived at the Atlantic Plaza Towers for generations. Both Moran and Rogers are floor captains, acting as liaisons between the people on their floors and the property's tenant's association. Over the last year Moran and Rogers have been protesting against the introduction of facial recognition to Atlantic Plaza Towers.[3] Tonight they are acting as my gracious hosts. I decided to come to this meeting after their representatives at Brooklyn Legal Services connected me to them via email, and l explained l wanted to feature their work in this article. The flyer they created to advertise the event billed it as "a community forum on the issues surrounding facial recognition." I found this intriguing because much of the advocacy around banning the use of biometric technologies that I have been exposed to is often done for the Black community, but rarely driven by Black people.

Atlantic Plaza Towers was purchased by the NMG in 2006.[4] Since then, the property has undergone extensive renovations. Each building has a beautiful, well-lit facade, and guests are greeted by a security guard. Tonight, in order to gain entry to the building l am buzzed in through two security doors before reaching the front desk. Once l reach the desk, a security guard asks for my ID. The guard glances at the picture on my ID and then my face before buzzing me through a final door, giving me access to the lobby. The commu-

> [S]ociologist Michael P. Jefferson used the term anti-Blackness to describe the 'debasement of [B]lack humanity, utter indifference to [B]lack suffering, and denial of [B]lack people's right to exist.'

nity meeting is taking place in a large room at the back of the building. As I walk in, a sea of multi-generational Black faces look up to see who has just come in. Atlantic Plaza Towers is home to multiple generations of the same families. Some people smile, others say hello, and at least three people urge me to get something to eat.

Brownsville is home to the highest concentration of public housing in New York City.[5] The median household income is approximately $26,400 and the neighborhood has a 39.9 percent poverty rate.[6] In 2015, Brownsville's population was 70 percent Black and 25 percent Latinx.[7] Though not public housing, Atlantic Plaza Towers is rent controlled and houses a number of Section 8 recipients. 90 percent of the residents are people of color.[8]

Due to their own racism and classism, some people might write off this community

as unsophisticated, but they would be mistaken. I am sitting in a room with at least 75 other Black people discussing the privacy implications of biometric technology. The conversation does not quiet down until a local assemblywoman starts to discuss the paperwork the tenant's association filed with a New York agency to stop NMG from installing facial recognition technology at the entrance of Atlantic Plaza Towers.[9]

How Facial Recognition Technology Works

During the tenant's association meeting, I find out the cameras currently in the Atlantic Plaza Towers building are being used to take pictures of tenants performing everyday tasks. If the tenants engage in a minor infraction—for example, not separating recycling—management sends them a picture of the infraction and issues a fine, a practice which is illegal in New York State.[10]

The facial recognition (FR) technology that NMG wants to install would take pictures of people's faces and match the picture against the images of people in an approved database.[11] FR systems are part of a host of biometric technologies being sold as security solutions within the residential housing market. The data used to train facial recognition systems to be able to match a face to a picture is made up of tens of thousands of digital images of people's faces which, under current law, can be mined from anywhere.

Automated Anti Blackness

There is historical precedent for technology being used to survey the movements of the Black population. In 1713, New York passed the Lantern Law which demanded that any

enslaved person over the age of 14 carry a lantern at night so they could be easily seen by White people.[12] Much like Nelson, at the time New York City legislators associated Black people with crime. This use of lanterns, which were the cutting-edge technology of the day, mirrors the proposed use of facial recognition technology at Atlantic Plaza Towers. I view both of these cases as examples of anti-Blackness in policies.

In a 2014 op-ed published by the Washington Post, sociologist Michael P. Jefferson used the term anti-Blackness to describe the "debasement of [B]lack humanity, utter indifference to [B]lack suffering, and denial of [B]lack people's right to exist."[13]

Automated anti-Blackness is a particularly potent form of racism because it is enabled by data driven decision making, which is assumed to be objective. How-

> *Given the subjective way in which algorithms are designed, the accuracy of facial recognition systems not only relies on the training data but also on the people who are creating the algorithms because FR systems 'see' through the eyes of their creators.*

ever, data scientist Cathy O'Neil argues that algorithms are not objective in nature. In her book *Weapons of Math Destruction*, she reveals the subjective manner in which developers decide which inputs to use in the algorithm design process and what weight to give to each factor.[14] She concludes technical systems become encoded with biases of their creators because algorithms are simply opinions written into code.[15]

Given the subjective way in which algorithms are designed, the accuracy of facial

recognition systems not only relies on the training data but also on the people who are creating the algorithms because FR systems "see" through the eyes of their creators. This can create problems for tech companies that lack employees who are racial minorities. I recently conducted a diversity audit of Google and Facebook's Artificial Intelligence (AI) research teams, and found they had one and zero Black members respectively.[16] In addition to having little racial diversity on teams responsible for AI, tech companies working with facial recognition systems often find it difficult to obtain datasets with Black faces. One solution employed by a Google contractor was to offer Black homeless men in Atlanta $5 gift cards to scan their faces.[17] This may diversify the dataset, but it is deeply unethical.

The way in which algorithms generate discriminatory outputs is often referred to as bias. However, the term "bias" does not speak to the unique ways AI technologies are weaponized against African American communities and reproduce historical patterns of racism. This is an argument put forward by Simone Browne on her seminal work on the history of surveillance *Dark Matters*.[18] This phenomenon Browne uncovered can clearly be seen in facial recognition technology.

In 2018, computer scientists Joy Buolamwini and Timnit Gebru published a paper exploring how accurate commercially available FR systems were at identifying gender.[19] The systems were accurate 99 percent of the time when identifying lighter-skinned men, but the darker the skin of the person, the less accurate the FR systems were—gender was misidentified in 35 percent of photos of darker-skinned females. This begs the question: are these facial recognition systems for all people, or just White people?

The expression of racial bias by FR systems was further explored by the American

Civil Liberties Union (ACLU). In the same year the Buolamwini and Gebru report was released, the ACLU ran a test to assess the accuracy of Amazon's consumer recognition software, Amazon Rekognition.[20] The ACLU's test compared images of members of Congress with a database of mugshots.[21] Rekognition identified 28 members of Congress as other people with criminal records.[22] The misidentification rates were disproportionately high among the Black members of Congress.[23] Nearly "40 percent of Rekognition's false matches in [the] test were of people of color, even though they make up only 20 percent of Congress.[24] The FR system's misidentification of innocent Black men and women as people who had been convicted of crimes is an example of automated anti-Blackness.

The lack of meaningful regulation of biometric data means building managers could argue they want facial recognition systems to consider criminal history as a factor when making decisions about building access. Residents living in buildings using FR systems that are connected to a database with mugshots may be misidentified as persons with criminal histories, which could cause the person to be denied entry and—if the building works with law enforcement—unjustly detained.

The Use of Facial Recognition by the Government

Despite issues with accuracy and a lack of market testing, governments across the world are increasing their spending on facial recognition technology.[25] Taxpayers in the United States are therefore paying for AI systems that have been shown to discriminate against people on the grounds of race. What makes this worse is it is hard to hold FR developers accountable for their flawed systems because FR algorithms are protected by intellectual property (IP) laws. This lack

> *The FR system's misidentification of innocent Black men and women as people who had been convicted of crimes is an example of automated anti-Blackness.*

of transparency creates a power imbalance between developers, who are typically private contractors, and policy makers, who use public funds to procure AI systems.

Regulating Artificial Intelligence

Given the emergent nature of most AI technologies, impacted groups are the experts on how AI systems can marginalize certain populations. In order to generate the political will needed to regulate these technologies, I strongly recommend the adoption of a design justice framework.[26] Design justice is a theory developed by communications scholar Sascha Costanza-Chock.[27] She found that by centering impacted groups in the design process and focusing policy interventions on the impact—in our case the error rate with facial recognition systems—rather than their intention, policy makers can create frameworks that dismantle systems that reinforce anti-Black racism.[28] The adoption of design justice thinking makes way for the co-creation of AI policy with community groups.[29]

Co-creation is a theory documented by Katerina Cizek, William Uricchio, and Juanita Anderson at MIT. Co-creation often happens within communities, across disciplines, and increasingly with living systems and AI.[30] Co-creation confronts power

systems that perpetuate inequality and offers alternative, open, equitable, and just models of decision-making, rooted in social move-

> *[B]y centering impacted groups in the design process and focusing policy interventions on the impact— in our case the error rate with facial recognition systems—rather than their intention, policy makers can create frameworks that dismantle systems that reinforce anti-Black racism.*

ments."[31] In this case the power is concentrated with private companies developing facial recognition systems. Co-creation within communities in order to tackle the issue of racial bias in FR systems would create a path to develop socially just polices that can regulate biometric technologies.

Moving Forward

Utilizing both the design justice framework and the co-creation frameworks has been extremely effective for tenants in the Atlantic Plaza Towers. Press about the use of facial

> *Co-creation within communities in order to tackle the issue of racial bias in FR systems would create a path to develop socially just polices that can regulate biometric technologies.*

recognition technology at Atlantic Plaza Towers centered the stories of tenants living in the building. The negative PR that ensued

moved policy. The first policy shift was NMG withdrawing its application with a New York State agency to install FR units in the building.[32] Second, local politicians are taking up these issues in the legislature. The call for regulation was answered by both state Assemblywoman Latrice Walker and Congresswoman Yvette Clarke, both of whom introduced the No Biometric Barriers to Housing Acts to their legislatures.[33] The centering of community voices birthed a movement in New York State to ban facial recognition in public spaces bringing New York in line with other anti-facial recognition movements across the country.

Moving forward, I have the below recommendations for regulating facial recognition systems in New York State housing:

1. Demand government vendors conduct impact assessments on all algorithmic decision making technologies—a regular evaluation of the tools for accuracy, fairness, bias and discrimination.[34] If any facial recognition system is found to have **any discriminatory impact**, the use of FR technology should be banned within any properties under New York City Housing Authority control.

2. The New York City Housing Authority should create an Office of Science & Technology to house a team of public interest technologists who are charged with the oversight of how emergent technologies are used within the agency.[35]

3. The enforcement of a five-year moratorium on the use of facial recognition technology in public housing, in order to conduct an independent investigation into emails dating back to 2009 relating to the use of FR in properties under New York City control. This investigation should be conducted by an independent group

of public interest technologists that is made up of, but not limited to, residents of each building currently using FR technology, computer scientists, sociologists, artists, anthropologists, legal scholars and practitioners, as well as activists from jurisdictions that have banned the use of facial recognition in public spaces.

Facial recognition technologies are only one example of biometric systems being used by the public sector. For example, the New York Police Department's (NYPD) uses ShotSpotter technology, a listening system that uses algorithms to identify gunshot sounds.[36] Once the system detects a gunshot it starts recording, and the recording is then sent to a monitoring facility, then shared with local law enforcement agencies.[37] This has raised questions around whether this constitutes a warrantless search, which is a violation of fourth amendment rights.[38] To fully protect Black people from automated anti-Blackness, policy makers need to enact comprehensive privacy laws that cover all uses of biometric data in public life.

Endnotes

1. "Nelson Management Group Portfolio," Nelson Management Group, n.d. https://nelsonmanagement group.net/nmg-portfolio/.

2. "Nelson Management Group Portfolio"

3. Yasmin Gagne, "How we fought our landlord's secretive plan for facial recognition—and won," *Fast Company*, https://www.fastcompany.com/90431686/our-landlord-wants-to-install-facial-recognition-in-our-homes-but-were-fighting-back?partner=feed burner&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+fastcocreate%2F feed+%28Co.Create%29.

4. "Atlantic Tower Plaza," Nelson Management Group, n.d. https://nelsonmanagementgroup.net/port folio/atlantic-plaza-towers/.

5. Yasmeen Khan, "Brownsville: No Label Necessary," *WNYC*, 29 January 2018.https://www.wnyc.org/story/brownsville-no-label-necessary/

6. "BK16: Brownsville," NYU Furman Center, n.d. https://furmancenter.org/neighborhoods/view/browns ville

7. Ibid.

8. Sarina Trangle, "N.Y. Brownsville Tenants Push Back on Facial Recognition Plan," Government Technology, 2 May 2019. https://www.govtech.com/products/NY-Brownsville-Tenants-Push-Back-on-Facial-Recog nition-Plan.html.

9. Ibid.

10. "Tenant Rights," NY.gov, n.d. https://ag.ny.gov/sites/default/files/tenants_rights.pdf

11. Rebecca Heilweil, "Tenants sounded the alarm on facial recognition in their buildings. Lawmakers are listening," *Vox*, 26 December 2019. https://www.vox.com/recode/2019/12/26/21028494/facial-recogni tion-biometrics-public-housing-privacy-concerns

12. Ethan Chiel, "New York City has been shining surveillance lights on its black population for the last 300 years," *Splinter*, 19 May 2016. https://splinternews.com/new-york-city-has-been-shining-surveillance-lights-on-i-1793856900.

13. Michael P. Jeffries, "Ferguson Must Force Us to Face Anti-Blackness," *Boston Globe*, 28 November 2014. https://www.bostonglobe.com/opinion/2014/11/28/ferguson-must-force-face-anti-blackness/pKVMpGx wUYpMDyHRWPln2M/story.html

14. Mona Chalabi, "Weapons of Math Destruction: Cathy O'Neil adds up the damage of algorithms," *Guardian*, 27 October 2016. https://www.theguard ian.com/books/2016/oct/27/cathy-oneil-weapons-of -math-destruction-algorithms-big-data

15. Chalabi, "Weapons of Math Destruction"

16. Mutale Nkonde, "A.I. Is Not as Advanced as You Might Think," *Medium*, 10 June 2019. https://zora.medium.com/a-i-is-not-as-advanced-as-you-might -think-97657e9eecdc.

17. Jennifer Elias, "Google Contractor Reportedly

Tricked Homeless People Into Face Scans," CNBC, 2 October 2019. https://www.cnbc.com/2019/10/03/google-contractor-reportedly-tricked-homeless-people-into-face-scans.html.

18. Simone Browne, *Dark Matters* (Durham, NC: Duke University Press, 2015). https://www.dukeupress.edu/dark-matters.

19. Steve Lohr, "Facial Recognition Is Accurate, if You're a White Guy," *New York Times*, 9 February 2019. https://www.nytimes.com/2018/02/09/technology/facial-recognition-race-artificial-intelligence.html.

20. Nick Wingfield, "Amazon Pushes Facial Recognition to Police. Critics See Surveillance Risk," *New York Times*, 22 May 2018. https://www.nytimes.com/2018/05/22/technology/amazon-facial-recognition.html.

21. Jacob Snow, "Amazon's Face Recognition Falsely Matched 28 Members of Congress With Mugshots," *ACLU*, 26 July 2018. https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28.

22. Snow, "Amazon's Face Recognition Falsely Matched 28 Members of Congress With Mugshots"

23. Ibid.

24. Ibid.

25. "Facial Recognition Market 2019 Global Size, Share, Growth, Competitor Strategy and Trends by Forecast to 2022," *Market Watch*, 12 April 2019. https://www.marketwatch.com/press-release/facial-recognition-market-2019-global-size-share-growth-competitor-strategy-and-trends-by-forecast-to-2022-2019-04-12

26. "Design Justice Network Principles," *Design Justice Network*, last updated Summer 2018. https://designjustice.org/read-the-principles

27. Sasha Costanza-Chock, *Design Justice: Community-Led Practices to Build the Worlds We Need* (Cambridge, MA: MIT Press, 2020). https://mitpress.mit.edu/books/design-justice.

28. Costanza-Chock, *Design Justice*

29. "Collective Wisdom: Co-Creating Media within Communities, across Disciplines and with Algorithms," Co-Creation Studio Website, n.d. https://cocreationstudio.mit.edu/

30. Katerina Cizek et al., "Collective Wisdom: Co-Creating Media Within Communities, Across Disciplines and With Algorithms," Works in Progress, n.d. https://wip.mitpress.mit.edu/collectivewisdom.

31. Katerina Cizek et al., "Part 1: 'We Are Here': Starting Points In Co-Creation," Work in Progress, 14 May 2019. https://wip.mitpress.mit.edu/pub/collective-wisdom-part-1.

32. Alfred Ng, "Tenants Call for Better Laws After Stopping Facial Recognition from Moving in," *CNET*, 22 November 2019. https://www.cnet.com/news/tenants-call-for-better-laws-after-stopping-facial-recognition-from-moving-in/.

33. Elizabeth Kim, "Congress to Consider Bill Banning Facial Recognition from Public Housing," *Gothamist*, 29 July 2019. https://gothamist.com/news/congress-to-consider-bill-banning-facial-recognition-from-public-housing; H.R.4008-No Biometric Barriers to Housing Act of 2019 116th Congress (2019-2020). https://www.congress.gov/bill/116th-congress/house-bill/4008?r=9&s=1.

34. Margot E. Kaminski and Andrew D. Selbst, "The Legislation That Targets the Racist Impacts of Tech," *New York Times*, 7 May 2019. https://www.nytimes.com/2019/05/07/opinion/tech-racism-algorithms.html.

35. Mutale Nkonde, "A Case for Critical Public Interest Technologists," *Data Society*, 19 April 2019. https://points.datasociety.net/a-case-for-critical-public-interest-technologists-111d7ea3d384.

36. Zolan Kanno-Youngs, "New York Police to Expand ShotSpotter Technology," *Wall Street Journal*, 3 August 2017. https://www.wsj.com/articles/new-york-police-to-expand-shotspotter-technology-1501798302

37. Hannah Gold, "Shotspotter: Gunshot Detection System Raises Privacy Concerns on Campuses," *The Guardian*, 17 July 2015. https://www.theguardian.com/law/2015/jul/17/shotspotter-gunshot-detection-schools-campuses-privacy.

38. Ibid.

Advancing Racial Justice through Local Governments

Zoe Bulger

Zoe is a first-year masters in public policy student at Harvard Kennedy School. Prior to graduate school, she worked as a consultant at The Bridgespan Group, a nonprofit strategy and management consulting firm. At Bridgespan she supported clients in the fields of early childhood development, public health, child welfare, and economic opportunity. After graduating, Zoe hopes to support state and local governments advance racial equity through justice-oriented policies and practices.

Introduction

What does it look like to center racial justice work in local (city and county) governments?[1] This paper aims to answer this question by drawing on the work of intermediaries in the space (e.g., the Government Alliance for Racial Equity) and on examples from city- and county-led efforts.[2] Together these resources and examples help create a picture of what racial justice work through local government should be and could be. While I do not claim a singular, comprehensive answer, this paper offers a broad process for how local governments can approach racial justice, including principles that should guide the work and five iterative stages of the work.

Principles for the Work

There are four principles that appear salient when looking across racial justice movements broadly, as well as at racial justice efforts within local government.

First, agencies and individuals must continually renew their commitment to racial justice, recognizing that change will take many years and competing priorities will always try to undermine the process. For instance, consider Seattle, one of the first cities to launch a city-wide initiative focused on racial justice. The People's Institute for Survival and Beyond, an international collective

of anti-racism community organizers and educators, first began working with leaders in Seattle in the early 1990s. Yet it took more than a decade for the city to formalize a commitment to racial justice, launching the Racial and Social Justice Initiative (RSJI)

> *First, agencies and individuals must continually renew their commitment to racial justice, recognizing that change will take many years and competing priorities will always try to undermine the process.*

in 2005. And today, racial equity leaders in the city acknowledge that there is still much work to be done to fully invest in and advance a racial justice strategy.[3]

Second, cities must prioritize the relational and cultural elements of change alongside the structural. It will not be enough to enact shifts in policy and practice if the ways in which individuals and agencies operate—their values, relationships, and sources of knowledge and power—do not also expand. This centering of the relational and cultural means actively resisting elements of White supremacy culture (such as progress always mean more)[4] and may feel at odds with the urgency of the problem, but it is crucial. In Salinas, California, leaders of the cross-sector Healing-Informed Governing for Racial Equity initiative have acknowledged the need for relational work with the community:

> . . . if you focus too much on the system, you can . . . have unhealed relationships . . . This can generate in the broader community a cynicism in dealing with race, and about that particular government's commitment.
> –Rinku Sen, Race Forward[5]

Relational and cultural change has also been critical to Racial Equity Here, an initiative to advance racial equity efforts within five cities:

> We went into Racial Equity Here wanting to count the number of policies changed. But, we also saw colleagues . . . deepen their relationships with each other. We saw conversations about race normalized in city halls. We saw leaders in cities realize their own power as gatekeepers . . . We saw them speaking and listening to communities of color and implementing their ideas. We saw a mayor address his staff after a hate crime was committed in their city, not with speech of politics, but with poetry aimed at connecting to peoples' hearts. **We did not know that this 'soft' stuff of culture change would be the most important story we have to tell about these cities, but it was . . .**[6] (emphasis mine)

Third, cities must center histories of power, oppression, and resistance, thereby helping to amplify traditionally marginalized voices and ensure injustices are not perpetuated. By grounding present day efforts in an understanding of history, cities better recognize who must be included and empowered in the change effort and what stands in the way of trust and collaboration. As Race Forward leader Rinku Sen said about the work in Salinas, ". . . The trauma that communities experienced from [the] government fifty years ago is still present in those communities, and it needs to be taken [into] account."[7] An understanding of past injustice can also help explain how current inequities came to be, pushing individuals and agencies to address root causes rather than symptoms.

Finally, cities must recognize that they will "stumble forward" in this work. This means not giving up when mistakes are

---

made, and not lowering the standard for progress or relinquishing accountability. In Minneapolis, for instance, community leaders have called for more "White humility" in the city's approach to racial equity,[8] recognizing that in order to create progress, leaders will need to ask tough questions of themselves and one another, reflecting on failure without letting failure get in the way of pushing forward.

Stages of the Work

In addition to the four principles outlined above, cities should move through five main stages of work. These stages do not reflect a purely linear process, but rather iteratively build upon one another.

1. Identify and/or develop racial equity champions with some power

Cities looking to advance racial justice need racial equity "champions" who raise racial equity as a priority and eventually catalyze and drive the work.

Effective champions need to be able to think beyond the scope of what the city expects, working creatively for transformation and confronting deeply held values. For instance, one early champion in Seattle, Larry Evans, describes expanding the scope of his role in order to do the work in a way that would actually advance equity:

> I know my job description as a legislative aid—and this speaks to institutional racism—if I do it the way they write it, it's guaranteed to support white supremacy and to do harm to my community. So I have to look at that job description (as we all

do) and figure out "Okay, how am I going to interject elements that I need to interject in this so that not only do I do no harm but do benefit to my community?"[9]

Racial equity champions also need high emotional intelligence to be able to guide people through the pain, distrust, and ambiguity of racial justice work. Rinku Sen, a leader from Race Forward who worked on Salinas County's Healing-Informed Governing for Racial equity effort, explains:

> One thing we know is that people have a lot of anxiety about race discussions. You have to have the emotional intelligence to lead that work, emotional insight into the toll that racism has taken on communities historically and now.[10]

Often, early champions will burn out or be pushed out before a city government reaches a tipping point of buy-in and support. As such, it is important to recognize prior work that paved the way for more formal efforts and to create links between past and current champions (e.g., by the time Seattle's RSJI launched, many of the early leaders were gone).[11] Moreover, while early in the process racial

> *Finally, cities must recognize that they will "stumble forward" in this work. This means not giving up when mistakes are made; and not lowering the standard for progress or relinquishing accountability.*

equity champions may be clustered at low levels of leadership, eventually champions should exist at the most senior levels in order to expand and sustain the city's commitment.

2. Build knowledge, urgency, and trust

Cities need to establish a foundation of knowledge, urgency, and trust. Specifically, cities need to educate staff on the history of race and racism in the United States, the basics of racial equity (e.g., what racial equity means), and current racial disparities. Such efforts help build the case for racial justice work, establish the moral risk of doing nothing, and create shared understanding, including language, frameworks, and tools.

Early in the process, cities often ask external partners to lead training sessions and retreats and target high-level leadership to build buy-in. For instance, when Salinas was just starting its Healing-Informed Governing for Racial Equity initiative, the mayor, city manager, police chief, and public works director were invited to a racial justice leadership training led by Race Forward.[12] This training helped generate support and trust among these leaders, which has since proved critical to the cross-sector initiative. Over time, though, cities need to reach a critical mass of city staff (and ideally community members) to create change. For instance, Salinas chose to invest in a weeklong training for directors and staff from all fifteen city departments, which helped to "raise everyone up."[13] In Fairfax, Virginia, local leaders developed and disseminated a racial equity profile of the county to demonstrate persistent inequities and expose how much more prosperous Fairfax would be if the equity gap was closed after discovering in 2012 that there existed a $26.2B GDP gap due to racial disparities in income. According to these leaders, the profile was "instrumental in changing the narrative on the importance of equity to Fairfax County's future," eventually leading to the adoption of the One Fairfax resolution for advancing equity.[14]

At some point, cities should also bring educational efforts in-house to scale and sustain the learning over time. For example, the city of Portland now requires all staff to participate in an Equity 101 training led by the Office of Equity and Human Rights.[15]

3. Commit resources and develop structures for action and accountability

To launch and sustain racial equity efforts, cities must commit resources, including time, money, expertise, and institutional power, and develop structures that will support ongoing action and accountability. In many cities, this step manifests in local laws and new or revamped offices for equity, which can be powerful ways to institutionalize racial equity as a priority. Cities that have passed ordinances related to racial equity in the past decade include Austin, Baltimore, Boston, Minneapolis, Oakland, Portland, and Seattle, to name just a few. For instance, in 2019 Pittsburgh passed legislation that declared its commitment to breaking down barriers to racial economic inclusion and equitable growth, required equity reporting for all city departments, and created an equity and inclusion implementation team to support implementation, monitoring, and enforcement of equity and diversity goals across city departments.[18]

Many cities also set up new or re-invest in existing equity offices reporting into the mayor or city manager. These offices usually conduct internal activities focused on the jurisdiction's workforce (e.g., how to ensure equity in hiring) as well as external-facing activities, although the scope of this external work is wide-ranging (e.g., data collection, policy making, training, budget analysis,

measurement and evaluation) and no shared criteria in the field for what makes such offices effective. While these offices often play a critical role in launching formal initiatives and providing ongoing targeted support, resource and capacity constraints mean they alone cannot drive change. Instead, the work must eventually be upheld by all agencies.

4. Take action in partnership with the community

With commitment and resources building, cities must, of course, begin to change their policy and practice in a way that operationalizes equity, and this action must be done in deep collaboration with the community. Often, at this stage, cities will require departments to develop and carry out racial equity plans specific to their work. For instance, Portland required each city bureau to develop a five-year plan, with the Office of Equity and Human Rights supporting bureaus in creating the plans and reporting progress to the city council.[19] Cities also often develop racial equity tools, which help individuals and agencies put racial equity into practice within a specific policy area. For instance, Austin created a racial equity assessment tool with community leaders, which as of March 2019 had been applied to more than half of the city's departments to help identify priorities for action.[20]

Perhaps most important—and most challenging—is ensuring such action is done in partnership with community members and other local stakeholders (e.g., nonprofits, organizers, etc.). Given traditional divides between governments and communities, cities should partner with communities as early as possible in the process and commit to deep listening, ceding of voice,

and ongoing alignment. For instance, the city of Portland and a local community organization co-hosted a listening session with more than 120 community members and city employees.[21] Even more telling, three of the eight areas named in Portland's racial equity strategy focus on community partnership and engagement.[22] Similarly, leaders in Seattle say that community engagement continues to be the hardest part of the work:[23]

> . . . to empower those communities so that they can do the work more effectively than we'll ever be

Perhaps most important—and most challenging—is ensuring such action is done in partnership with community members and other local stakeholders (e.g., nonprofits, organizers, etc.). Given traditional divides between governments and communities, cities should partner with communities as early as possible in the process and commit to deep listening, ceding of voice, and ongoing alignment.

> able to do the work, that's something that we continue to struggle with . . . when folks from the community are part of the institution and their expertise is recognized, you have internal change that takes place. It takes place very slowly, but it does take place.[24]

5. Measure, communicate, and evolve

Finally, cities must commit to ongoing and transparent measurement, communication, and evolution of the work. This is the stage

that feeds most directly back into each of the other stages, but for which there are the fewest examples of success, given how relatively young most city racial equity initiatives are and how long it can take to see change in outcomes rooted in centuries of racism.

Tools such as Results-Based Accountability are commonly used as part of the measurement process, yet it is not clear cities invest enough in distinct resources and expertise for measurement and evaluation. For instance, looking across racial equity offices in thirty three cities, ongoing performance measurement was one of the least common practices performed by offices.[25] Commissions or councils that represent both the city and community can also help ensure ongoing communication and expansion of the work, serving as a platform for community members to share concerns and as an advisor to city bureaus. However, these commissions must be set up in a way that truly empowers them to play this role; many cities appear to have such commissions, but the scope of their work and capacity is limited.

Ultimately, as cities track progress against actions identified in stage four, the scope of their work should evolve to reflect learnings and better address the way that racial oppression operates across all aspects of public life.

Conclusion: Moving Towards Success for Racial Justice Work in Local Government

Stepping back, there are clear themes for how we can begin to center racial justice work within cities. However, there is limited consensus on what defines success in this work and what it takes to sustain the work. While there are an ever-growing number of cities with bold racial equity offices and plans, it seems too early in the process to truly understand "what works" and to begin to claim the impacts of city efforts. This makes it that much more urgent that cities approach the work alongside communities, and that they commit to ongoing measurement and evolution. Moreover, cities cannot shy away from what resources are needed to spur and sustain their racial justice efforts. We have seen philanthropy play a role in supporting the launch of racial equity initiatives—for instance, the California Endowment funds the steering committee in Salinas—but it is clear that current resources are not enough to sustain transformative processes.[26] What will it take for cities and their partners to own the urgency and accountability of this work with not just grand plans, but also the resources to carry them out?

Endnotes

1.   In this paper, racial justice work in local government refers to ***efforts to advance racial equity and justice*** within a given city that are ***driven by local government agencies*** and that focus on ***community-facing impact***, rather than internal processes related to equity and inclusion (such as equal opportunity employment). See Appendix 1 for the reasons why local governments can be a powerful lever for racial justice

2.   For the remainder of this paper, I use "cities" as shorthand to refer to cities and counties

3.   "Race and Social Justice Initiative," Seattle.Gov, 2019. https://www.seattle.gov/rsji; "Panel Discusses Formation of the Race & Social Justice Initiative," Seattle Chanel Video, 24 October 2018. http://www.seattlechannel.org/misc-video?videoid=x99356.

4.   My understanding of White supremacy values and how they show up in professional spaces is informed by Okun Tema's articulation of White supremacy norms in "White Culture" (Okun, n.d.)

5.   Jamilah Bradshaw Dieng, Jesús Valenzuela, and Tenoch Ortiz, "Building the We: Healing-Informed Governing for Racial Equity in Salinas," Race Forward, 2016. https://www.raceforward.org/system/files/pdf/reports/BuildingTheWe.pdf.

6.   Nadia Owusu and Ben Hecht, "Beyond Counting Policies: Measuring Progress in Racial Equity," Living Cities (blog), 22 March 2019. https://www.livingcities.org/blog/1288-beyond-counting-policies-measuring-progress-in-racial-equity.

7.   Dieng et al., "Building the We"

8.   Solomon Gustavo, "YWCA Forum Calls for More 'White Humility,'" *Minnesota Spokesman-Recorder*, 12 February 2019. https://spokesman-recorder.com/2019/02/12/ywca-forum-calls-for-more-white-humility/.

9.   "Panel Discusses Formation of the Race & Social Justice Initiative"

10. Dieng et al., "Building the We"

11. "Panel Discusses Formation of the Race & Social Justice Initiative"

12. Dieng et al., "Building the We"

13. Ibid.

14. Tracey Ross, "All-In Cities: Building an Equitable Cities Movement," *PolicyLink*, July 2019. https://allincities.org/resources-tools/equitable-cities-movement.

15. Danielle Brooks et al., "City of Portland: Racial Equity Toolkit," *Office of Equity and Human Rights*. https://www.portlandoregon.gov/oehr/article/592297.

16. Ross, "All-In Cities: Building an Equitable Cities Movement"

17. A review of 33 city equity offices found support from high-level officials to be a critical factor in an office's success. Fred Brousseau and Amanda Guma, "Policy Analysis Report Re. Survey of Other Local Offices of Equity and Current Efforts by the City and County of San Francisco to Address Racial and Other Inequities," *San Francisco, CA: Budget and Legislative Analyst*, 1 May 2019. https://sfbos.org/sites/default/files/BLA.OfficeofEquity.050119_0.pdf.

18. Brousseau and Guma, "Policy Analysis Report"

19. Ross, "All-In Cities: Building an Equitable Cities Movement"

20. Owusu and Hecht, "Beyond Counting Policies: Measuring Progress in Racial Equity"

21. Ross, "All-In Cities: Building an Equitable Cities Movement"

22. Brooks et al., "City of Portland: Racial Equity Toolkit"

23. "Panel Discusses Formation of the Race & Social Justice Initiative"

24. "Panel Discusses Formation of the Race & Social Justice Initiative"

25. Brousseau and Guma, "Policy Analysis Report"

26. Dieng and Valenzuela and Ortiz, "Building the We"

DC: The Nation's Plurality African American Capital and Disenfranchisement in the United States Congress

Miriam Edelman

Native Washingtonian Miriam Edelman graduated from Barnard College, Columbia University, with majors in political science and urban studies and a concentration in history. For almost five years she worked on Capitol Hill in personal offices and on committees in the United States Senate and the United States House of Representatives. Most notably, she worked for the House Oversight and Government Reform Committee and the Energy and Commerce Committee. In May 2012, she graduated with a master's in public administration from Cornell University, where she was inducted into Pi Alpha Alpha, the national honorary society for public administration. Primarily for her work founding the Jade Moore Forum on American Politics in memory of her late friend, Edelman was one of two graduate student recipients of the Cornell-wide Distinguished Leadership Award. She also has a master's of science in social work focusing on policy from Columbia University. She aims to continue her career in public service.

Introduction

The United States Constitution created the District of Columbia with Article I, Section 8, Clause 17. It stipulated that a Congressional responsibility was "[to] exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States."[1]

Unfortunately, for most of American history District of Columbia (DC) residents have been disenfranchised—and still are in important ways. Despite paying taxes and fighting in wars, they lack full Congressional representation. They have had just one non-voting House of Representatives member since 1971.[2] Prior to 1971, they briefly had a non-voting representative in the 1870s. This official can serve on and vote in committees, speak on the House Floor, and introduce bills.[3] Without Senate representation, DC residents have had no input on Supreme Court nominations, cabinet nominations, and treaties.[4]

Congress has the power to disapprove anything passed by DC's government and controls DC's finances. The president appoints DC's judges.[5] DC residents do not control their local or national policy, yet most Americans are not aware of this injustice.[6] As DC statehood expert Garry Young said, "When you talk to tourists

here in town, they are shocked when you tell them the district has no voting in Congress."[7] However, Americans who do know about DC's disenfranchisement support DC voting rights.[8]

Why DC's Disenfranchisement Matters for African Americans

When DC was declared the United State's capital in 1791, African Americans comprised 25 percent of the city's population, and most of them were enslaved. During the Civil War and Reconstruction era, more than 25,000 African Americans moved to DC When DC was a federal territory during the early 1870s, African American men played a major political role. However, in 1874, three presidentially appointed commissioners replaced the territorial government in part due to a reactionary response to the increase in African American political power. Government of DC by appointed commissions continued until the civil rights movement in the 1960s.

Since the turn of the twentieth century, DC has had among the largest percentages of African Americans of any major United States city. Many African Americans work for the federal government. Many attended college at Howard University since its founding in 1867. DC has hundreds of African American owned businesses. The District of Columbia Home Rule Act of 1973, enacted by Congress and ratified by voters in DC, created the most expansive form of self-government in DC's history.[9] By 1975, African Americans comprised more than 70 percent of DC's population and shaped the city politically and culturally.[10] In recent years, the percent of DC's African American population has decreased as African Americans have chosen to move elsewhere or been displaced by gentrification. Since 2015, the District of Columbia has had a plurality of African Americans, comprising roughly 48.3 percent of its population.[11]

Differences exist in the way African American DC residents and White DC residents feel about how racism may have influenced DC's current Congressional representation situation. Whites who are not involved in integrated lives do not necessarily connect DC's political situation and race.[12] However, Whites in racially integrated residential and work areas have views similar to African Americans regarding the effects of racism as a barrier to DC voting.

Since DC achieved self-government in 1973, its top elected officials have been African American. All of DC's elected mayors have been African American, and in the early 1990s, DC Mayor Sharon Pratt became the first African American female mayor of a major American city.[13] Additionally, both of DC's non-voting delegates since 1971 have been African American.[14]

DC's disenfranchisement deprives its residents of the degree of influence on local, national, and international issues that citizens in the 50 United States states have. The city's residents have long taken issue with their disenfranchisement, harkening back to objections to taxation without representation that precipitated the Revolutionary war. In 2000, DC began issuing "Taxation Without Representation" license plates as a way of protesting its lack of voting representation in Congress.[15] In 2013, President Obama adorned his official presidential vehicles with those license plates, showing support for DC residents in their advocacy.[16]

At a time of narrow Congressional majorities and partisan gridlock, two additional senators and a voting house representative could make a difference in votes addressing issues of great concern to the African American community.

Criticism of DC Voting Rights and Counterarguments

"It's Not a State"

Critics claim that representation for DC would be unfair to other urban areas, which might also want the same direct representation. Why should the twentieth largest city have two senators while Denver, the nineteenth, shares its two with the rest of Colorado?[17] In addition, opponents often cite examples of United States territories like Guam and the United States Virgin Islands who also have one non-voting delegate in the United States House of Representatives and argue that DC should be treated the same.[18]

However, DC is already treated as a state in over 500 ways.[19] The Twenty-third Amendment to the United States Constitution authorized DC, the only non-state, to vote in Presidential general elections.[20] DC's mayor is similar to a governor, and DC's council is like a state legislature.[21] Since it is treated like a state in so many ways, DC should be properly treated as though it were a state by attaining Congressional voting representation.

Furthermore, in addition to voting in presidential elections and living in the nation's capital, DC residents are dissimilar from the residents of United States territories. Unlike the residents of Puerto Rico, who do not pay all federal taxes, and other territories, DC residents pay federal income taxes and thus experience taxation without representation.[23]

"Its Population is Too Small"

DC has a small population[23] of approximately 713,244 people.[24] Its population size was one reason why Congress did not give Congressional voting representation to DC in 1801. Its smaller population size and reliance on federal funds are common points used to argue for maintaining the status quo.

However, DC's population is larger than the population of both Vermont and Wyoming.[25] Both states have full voting representation. In addition, in 2013, twenty one states relied more on federal funding as a percent of state budgets than DC and of course have their full voting rights.[26] DC should not be an exception.

"It's Too Democratic"

DC is mainly Democratic.[27] Ever since DC gained the right to vote in the presidential election in 1961, DC has given its three electoral votes to Democrats. In 2016, 90.9 percent of DC's residents voted for Democrat Hillary Clinton.[28]

Yet when it comes to representation, partisan make-up should not matter. The political leanings of states have shifted dramatically over United States history and even in the past decade.[29] Residents of red, blue, and purple states did not have their right to vote determined by their political bent at the time of their admission to the United States, and DC should not be different.

Furthermore, DC voting rights were not always so partisan. Historically, both Democrats and Republicans have supported full DC Congressional representation.[30] One of many examples is the Republican 1976 platform, which stated that "We . . . support giving the District of Columbia voting representation in the United States Senate and House of Representatives."[31] Prominent Republicans, including President

Richard Nixon, presidential candidate Bob Dole, and Senator Strom Thurmond, were also supporters.[32]

"The Founding Fathers Did Not Want DC-Specific Voting Representation"

Certain critics argue that the founding fathers could have given voting rights to DC residents and that they intended this disenfranchisement.[33]

This argument lacks historical context. In early United States history, DC residents could vote in Maryland's and Virginia's Congressional elections, depending on which state gave the land where they lived.[34] The founding fathers placed great importance on the voting rights of citizens, and there is little that proves they did not want the city's residents to be able to vote for Congress.

"It's Too Close to Government"

Some people worry about DC residents having more influence because they are physically closer to the federal government. The logic of this position asserts that this proximity already affords DC residents outsized influence on national politics and that adding Congressional voting representation would give the city additional and unwarranted power.

Being near the federal government does not directly result in much political power or control over local issues. Many Congressional officials care more about their own state's constituents, national issues, and international affairs than DC specific issues.[35] In fact, elected officials' stances on DC issues often go against what many DC residents want for themselves.

Previous Attempts at Congressional Representation

Throughout the years, there have been multiple proposals that, if implemented, would have provided at least some voting representation in the United States Congress for DC residents. Some of the proposals have been the subject of Congressional hearings.

Statehood has been attempted before.[36] In 1980, DC voters approved their own constitution for a fifty-first state.[37] The Democratic Party has endorsed statehood in its party platforms for decades; yet even when the House is controlled by Democrats, it often refused votes on DC statehood.[38,39]

In the early 1990s, the House debated DC statehood for the first time.[40] In 1993, the White House favored statehood for the first time.[41] After a three-year effort to have DC statehood on the House Floor, the Democrat-controlled House rejected statehood, 277-153. Every Republican but one and 40 percent of Democrats voted against statehood.[42] This vote was the first time Congress ever denied an applicant state's admission to the United States[43] While statehood supporters considered the vote itself to be a political victory, opponents thought that the large loss spoke for itself.[44]

Efforts have also been made to gain Congressional voting rights for DC residents through an amendment to the United States Constitution. In 1978, Congress passed an amendment that would have granted DC residents voting representation, but this amendment was ratified by just 16 of the required 38 states.[45]

Other relevant Congressional bills were introduced. One was the No Taxation Without Representation Act of 2003, which would have granted DC full Congressional voting representation; however, the bill did not receive a vote on the floor.[46] This bill is

the simplest method to provide DC voting rights, but it could easily be overturned in a future Congress.

Another idea would have allowed DC residents to vote in Maryland's Congressional elections.[47] While DC residents would get Congressional representation from this plan, they might oppose the concept of voting in another jurisdiction's elections. DC residents would comprise only a small fraction of the constituency of Maryland's senators, who thus might not represent the District of Columbia well. DC residents may also not be represented well in the House since Maryland's legislature could draw Congressional districts so that DC voters would be unlikely to determine House election outcomes. As a result, DC residents would not be an important constituency for those officials. Maryland residents would most likely oppose this plan because they would not want to dilute their Senate representation power by letting DC residents vote in their elections. Marylanders may also want to not be represented by DC residents in Congress.

Another method would have returned most of DC to Maryland, which ceded land for DC centuries ago.[48] In order for retrocession to occur, residents of Maryland and DC would have to support it. There is no evidence of support for this among the citizens of Maryland or its state legislature, which would have to take formal action for retrocession to occur. As for DC, in 1994 only 19 percent of its residents supported this plan.[49]

International Perspectives

DC is the only capital of a democracy whose residents lack full representation in the national legislature. Other countries that disenfranchised their capital's inhabitants later granted them voting rights.[50]

Many countries used the United States as a model when they changed their form of government from non-democracy to democracy. Argentina, Australia, Brazil, Mexico, and Venezuela formed republican governments. Those nations used large portions of the United States Constitution in their new constitutions. As a result, they originally disenfranchised the residents of their capitals. However, since they wanted their governments to be more democratic, each of these nations thereafter ended the disenfranchisement of their capital's residents.[51]

Several multinational organizations have criticized DC's disenfranchisement, among them the United Nations.[52] In December 2003, the Organization of American States released a report stating that the DC situation violates international law.[53] In April 2005, the Organization for Security and Cooperation in Europe (OSCE) issued a report stating that "ensuring equal voting rights is a fundamental OSCE commitment."[54]

Conclusion

Due to partisan reasons, DC residents will likely not gain full Congressional voting representation anytime soon. However, both Republicans and Democrats have supported multiple initiatives in the past, including DC Congressional voting rights, for the betterment of the United States, not just their political parties.

This civil rights issue is unfortunately political, and both parties deserve blame. Despite Democrats largely supporting DC voting rights, twice over the past 30 years Democrats controlled the Presidency and both chambers of Congress , and DC residents still did not gain full representation.

DC's lack of full voting rights and Congressional representation are both an injustice to the African Americans who built the city, and continue to contribute to heavily, and a mark of shame upon our nation.

Note: This article primarily provides the background of DC voting rights and relates to the January 21, 2020, blog post "Groundbreaking DC Statehood Congressional Hearing" on our website.

Endnotes

1. "Article I," Legal Information Institute, accessed 10 March 2020. https://www.law.cornell.edu/constitution/articlei.

2. "10 Myths about the District of Columbia," DCVote, 25 November 2013. https://www.dcvote.org/10-myths-about-district-columbia; Ibid.; "Supreme Court Rejects Full D.C. Voting Rights," DCVote, 28 February 2014. https://dcvote.org/news/supreme-court-rejects-full-dc-voting-rights; "The Past, Present, And (Potential) Future Of D.C. Statehood, Explained," DCist (blog), accessed 10 March 2020. https://dcist.com/story/19/09/18/the-past-present-and-potential-future-of-d-c-statehood-explained/; Masur, Kate. "Opinion | Capital Injustice," New York Times, 28 March 2011. https://www.nytimes.com/2011/03/29/opinion/29masur.html.

3. "Delegate Walter Fauntroy of the District of Columbia," US House of Representatives: History, Art & Archives, accessed 10 March 2020. https://history.house.gov/Historical-Highlights/1951-2000/Delegate-Walter-Fauntroy-of-the-District-of-Columbia/; Garry Young, "The District of Columbia and Its Lack of Representation in Congress: What Difference Does It Make?," Center for Washington Area Studies, accessed 10 March 2020. https://cpb-us-e1.wpmucdn.com/blogs.gwu.edu/dist/7/677/files/2017/09/DC-Representation-Main-Report-Final-tnpnjt.pdf; "D.C. Gets Its 'Voting Card Back' (Well, Sort Of)." Roll Call, accessed 10 March 2020. https://www.rollcall.com/2019/01/18/d-c-gets-its-voting-card-back-well-sort-of/; Young, Garry, "The District of Columbia and Its Lack of Representation in Congress: What Difference Does It Make?," Center for Washington Area Studies, accessed 10 March 2020. https://cpb-us-e1.wpmucdn.com/blogs.gwu.edu/dist/7/677/files/2017/09/DC-Representation-Main-Report-Final-tnpnjt.pdf; "What Does DC's 'shadow Delegation' to Congress Actually Do?" WUSA, accessed 10 March 2020. https://www.wusa9.com/article/news/local/what-does-dcs-shadow-delegation-to-congress-actually-do/65-610751392.

4. "American Politics," University of Texas, accessed 10 March 2020. https://www.laits.utexas.edu/gov310/CO/keydif/index.html.

5. "D.C. Statehood Is Back On The Table. Here's What You Need To Know About Its Push To Become The 51st State," *WAMU* (blog), accessed 10 March 2020. https://wamu.org/story/19/09/19/d-c-statehood-is-back-on-the-table-heres-what-you-need-to-know-about-its-push-to-become-the-51st-state/; "10 Myths about the District of Columbia," DCVote, 25 November 2013. https://www.dcvote.org/10-myths-about-district-columbia.

6. Kate Masur, "Opinion | Capital Injustice," *New York Times*, 28 March 28 2011. https://www.nytimes.com/2011/03/29/opinion/29masur.html.

7. Jennifer Steinhauer, "The State of the Non-State, Washington, D.C.," *New York Times*, 6 October 2014. https://www.nytimes.com/2014/10/07/us/washington

-dc-statehood.html.

8. Mark David Richards, "US Public Opinion on Political Equality for Citizens of DC," DC Watch, 12 April 2000, accessed 10 March 2020. http://www.dcwatch.com/richards/000412.htm.

9. "D.C. Home Rule," Council of the District of Columbia, accessed 10 March 2020. https://dccouncil.us/dc-home-rule/.

10. "A Brief History Of African Americans In Washington, DC," Cultural Tourism D.C., accessed 10 March 2020. https://www.culturaltourismdc.org/portal/a-brief-history-of-african-americans-in-washington-dc.

11. "Report: How D.C. Can Help Its Black Population Stay In The City," DCist (blog), accessed 10 March 2020. https://dcist.com/story/17/10/13/state-ofblack-report/.

12. Edward M. Meyers, *Public Opinion and the Political Future of the Nation's Capital* (Washington, DC: Georgetown University Press, 1996), 95.

13. "Mayors of the District of Columbia Since Home Rule | Os," DC.gov, accessed 10 March 2020. https://os.dc.gov/page/mayors-district-columbia-home-rule; Samantha Kealoha, "Sharon Pratt Dixon Kelly (1944-)," BlackPast, 18 April 2007. https://www.blackpast.org/african-american-history/kelly-sharon-pratt-dixon-1944/.

14. "Delegate Walter Fauntroy of the District of Columbia," US House of Representatives: History, Art & Archives, accessed 10 March 2020. https://history.house.gov/Historical-Highlights/1951-2000/Delegate-Walter-Fauntroy-of-the-District-of-Columbia/.

15. Aaron C. Davis, "D.C. Poised to Change License Plate Slogan in Push to Become 51st State," Washington Post, 19 April 2016. https://www.washingtonpost.com/local/dc-politics/dc-poised-to-change-license-plate-slogan-in-push-to-become-51st-state/2016/04/19/edd0e538-063f-11e6-b283-e79d81c63c1b_story.html.

16. "After Years of Pressure, Obama Limos to Feature 'Taxation Without Representation' Plates," CBS News, accessed 10 March 2020. https://www.cbsnews.com/news/after-years-of-pressure-obama-limos-to-feature-taxation-without-representation-plates/.

17. "The 200 Largest Cities in the United States by Population 2020," World Population Review, accessed 10 March 2020. https://worldpopulationreview.com/us-cities/.

18. "United States Congressional Non-Voting Members,"Ballotpedia, accessed 10 March 2020. https://ballotpedia.org/United_States_congressional_non-voting_members.

19. "10 Myths about the District of Columbia," DCVote, 25 November 2013. https://www.dcvote.org/10-myths-about-district-columbia.

20. Chad Hughes, "A Utah Congressman Wants DC to Become Part of Maryland. Let's Examine That Idea….," Greater Greater Washington, accessed 10 March 2020. https://ggwash.org/view/62303/a-utah-congressman-wants-dc-to-become

-part-of-maryland.-lets-examine-that-i.

21. "10 Myths about the District of Columbia," DCVote, 25 November 2013. https://www.dcvote.org/10-myths-about-district-columbia.

22. Ben Pershing, "Decades-Long Effort to Exempt D.C. Residents from U.S. Income Tax Still Simmers," *Washington Post*, 13 April 2013. https://www.washingtonpost.com/local/dc-politics/decades-long-effort-to-exempt-dc-residents-from-us-income-tax-still-simmers/2013/04/13/2b364794-a3b8-11e2-be47-b44febada3a8_story.html.

23. "10 Myths about the District of Columbia," DCVote, 25 November 2013. https://www.dcvote.org/10-myths-about-district-columbia.

24. "District Of Columbia Population 2019 (Demographics, Maps, Graphs)," World Population Review, accessed 10 March 2020. https://worldpopulationreview.com/states/district-of-columbia-population/.

25. Matt Vasilogambros, "D.C. Has More People Than Wyoming and Vermont, Still Not a State," *Atlantic*, 30 December 2013. https://www.theatlantic.com/politics/archive/2013/12/dc-has-more-people-than-wyoming-and-vermont-still-not-a-state/437661/.

26. German Lopez, "Washington, DC, Is Voting on Whether to Become the 51st State," *Vox*, 12 November 2014. https://www.vox.com/2014/11/12/7173895/dc-statehood-new-columbia.

27. Ibid.

28. "District of Columbia Election Results 2016," *New York Times*, 1 August 2017. https://www.nytimes.com/elections/2016/results/district-of-columbia.

29. Jeffrey Jones, "Democratic States Exceed Republican States by Four in 2018," Gallup, 22 February 2019. https://news.gallup.com/poll/247025/democratic-states-exceed-republican-states-four-2018.aspx.

30. "Quotes Supporting Full Democracy for the District of Columbia," DCVote, 28 February 2014. https://www.dcvote.org/support-dc-equality/quotes-supporting-full-democracy-district-columbia.

31. Ibid.

32. Ibid.

33. "10 Myths about the District of Columbia," DCVote, 25 November 2013. https://www.dcvote.org/10-myths-about-district-columbia.

34. "The Past, Present, And (Potential) Future Of D.C. Statehood, Explained," *DCist*, accessed 10 March 2020. https://dcist.com/story/19/09/18/the-past-present-and-potential-future-of-d-c-statehood-explained/.

35. "10 Myths about the District of Columbia," DCVote, 25 November 2013. https://www.dcvote.org/10-myths-about-district-columbia.

36. George Derek Musgrove, "'Statehood Is Far More Difficult': The Struggle for D.C. Self-Determination, 1980–2017," *Washington History* 29, no. 2 (2017): 3-17. www.jstor.org/stable/90015019.

37. Randy James, "Breaking News, Analysis, Politics, Blogs, News Photos, Video, Tech Reviews," *Time*, 26 February 2009. http://content.time.com/time/politics/

article/0,8599,1881791,00.html.

38. Charles Wesley Harris, Congress and the Governance of the Nation's Capital: The Conflict of Federal and Local Interests (Washington, D.C.: Georgetown University Press, 1995), 214-215

39. Glen Elsasser, "AND THE LAST SHALL BE 51ST," *Chicago Tribune*, accessed 10 March 2020. https://www.chicagotribune.com/news/ct-xpm-1993-11-22-9311220137-story.html.

40. "House Turns Down Statehood For D.C.," *Washington Post*, accessed 23 March 2020. https://www.washingtonpost.com/archive/politics/1993/11/22/house-turns-down-statehood-for-dc/93c04aac-5635-4c5e-899a-9584e2660650/.

41. Glen Elsasser, "AND THE LAST SHALL BE 51ST," *Chicago Tribune*, accessed 10 March 2020. https://www.chicagotribune.com/news/ct-xpm-1993-11-22-9311220137-story.html.

42. "House Turns Down Statehood For D.C.," *Washington Post*, accessed 23 March 2020. https://www.washingtonpost.com/archive/politics/1993/11/22/house-turns-down-statehood-for-dc/93c04aac-5635-4c5e-899a-9584e2660650/.

43. Glen Elsasser, "AND THE LAST SHALL BE 51ST," *Chicago Tribune*, accessed 10 March 2020. https://www.chicagotribune.com/news/ct-xpm-1993-11-22-9311220137-story.html.

44. "House Turns Down Statehood For D.C.," *Washington Post*, accessed 23 March 2020. https://www.washingtonpost.com/archive/politics/1993/11/22/house-turns-down-statehood-for-dc/93c04aac-5635-4c5e-899a-9584e2660650/.

45. "The Past, Present, And (Potential) Future Of D.C. Statehood, Explained," *DCist* (blog), accessed 10 March 2020. https://dcist.com/story/19/09/18/the-past-present-and-potential-future-of-d-c-statehood-explained/.

46. Joseph I. Lieberman, "S.617 - 108th Congress (2003-2004): No Taxation Without Representation Act of 2003," Congress.gov, n.d. https://www.congress.gov/bill/108th-congress/senate-bill/617.

47. Dana Rohrabacher, "H.R.3709 - 108th Congress (2003-2004): District of Columbia Voting Rights Restoration Act of 2004," Congress.gov, n.d. https://www.congress.gov/bill/108th-congress/house-bill/3709.

48. Chad Hughes, "A Utah Congressman Wants DC to Become Part of Maryland. Let's Examine That Idea….," Greater Greater Washington, accessed 10 March 2020. https://ggwash.org/view/62303/a-utah-congressman-wants-dc-to-become-part-of-maryland.-lets-examine-that-i.

49. Mark David Richards, "Comparison of Approaches to Rights," DC Watch, February 2001, accessed 23 March 2020. http://www.dcwatch.com/richards/0102.htm.

50. Garry Young, "The District of Columbia and Its Lack of Representation in Congress: What Difference Does It Make?," Center for Washington Area Studies, accessed 10 March 2020. https://cpb-us-e1.wpmucdn.com/blogs.gwu.edu/dist/7/677/files/2017/09/DC-Representation-Main-Report-Final-tnpnjt.pdf

51. "Limited Voting Rights in the U.S. Capital," DCVote, 28 February 2014. https://dcvote.org/news/limited-voting-rights-us-capital.

52. Emmarie Huetteman, "District of Columbia Officials Push for Statehood at a Senate Committee Hearing," *New York Times*, 15 September 2014. https://www.nytimes.com/2014/09/16/us/district-of-columbia-officials-push-for-statehood-at-a-senate-committee-hearing.html.

53. "Inter-American Commission on Human Rights 2003 Decision on D.C.," DC Statehood: Yes We Can!, accessed 23 March 2020. https://dcstatehoodyeswecan.org/j/index.php?option=com_content&view=article&id=256:inter-american-commission-on-human-rights-2003-decision-on-dc&catid=45:oas&Itemid=143.

54. "April 4, 2005: NORTON HAILS SECOND INTERNATIONAL HUMAN RIGHTS DECISION FOR D.C. VOTING RIGHTS," Norton House, 11 January 2006. https://norton.house.gov/media-center/press-releases/april-4-2005-norton-hails-second-international-human-rights-decision-for.

"With All Deliberate Speed": Closing the Black Educator Gap

Michael Johnson

Michael Johnson is a first year master of public policy candidate at the University of Chicago Harris School of Public Policy. Originally from Virginia, Michael is passionate about education reform and worked to push for educational equity at all levels, including creating a student mentoring organization, serving as a civic fellow in the Office of the Virginia Governor, and as a policy researcher at The Commonwealth Institute for Fiscal Analysis. He currently serves as an apprenticeship & higher education fellow at Young Invincibles, where he works to expand pipelines for higher education access and affordability.

The thread of anti-Blackness is ubiquitous throughout the arc of United States jurisprudence and policymaking. Countless examples including *Plessy v. Ferguson*, FHA approved red-lining, and mass incarceration only begin to highlight the degree of institutionalized racism embedded within the fabric of this nation. Policies that explicitly adopt anti-Black language and implementation like those previously mentioned were and continue to be incredibly harmful. However, those which have race neutral implications often lead to the reshaping of oppressive structures rather than their elimination. The Black educator shortage is one structure which has been significantly shaped by a historic race neutral policy: *Brown v. Board of Education (1954)*. Given the incredible value of Black educators for Black students, we should look to the potentially well-intentioned *Brown* while understanding that racial education equity can most closely be achieved with race affirmative policies. Thus, targeted solutions are needed, such as investments in schools of education to provide tuition assistance for those obtaining their teaching license. Additionally, significant investments should be made to expand Grow Your Own (GYO) teacher preparation programs, particularly at HBCUs.

The Black Educator Gap

Nationwide, educators do not reflect the

racial diversity of their student populations. While students of color account for the majority of the student population, only 18 percent of educators identify as teachers of color.[1] Of these 18 percent, only 7 percent identify as Black, compared to the 16 percent of Black student population.[2] This shortage also extends to school leadership, as only 11 percent of principals identify as Black nationwide.[3] This presents a policy issue considering the transformative role of Black educators on their students.

Diverse learning environments benefit students overall, particularly Black students from low-income households. For Black students, the presence of Black teachers has been linked to improved attitudes toward their school, reductions in chronic absenteeism and school dropout rates, as well as increased levels of college enrollment. For Black boys in grades 3-5, the presence of just one Black teacher decreased their likelihood of dropping out of high school by 29 percent. For Black boys from very low-income households, having one Black teacher decreased their chances of dropping out by 39 percent.[4]

Making sure that Black students have more than one Black teacher is also crucial to their academic performance. Black students in grades K-3 with just one Black instructor were 13 percent more likely to enroll in college than those who do not, according to a study by researchers at American University, Johns Hopkins University, and University of California Davis.[5] Additionally, students who had two Black teachers throughout this age range were 32 percent more likely to enroll in college. Having a greater number of Black instructors has also been associated with decreased suspension rates for Black students.[6]

While there is no single cause of the Black educator gap, there are a few factors which stand out. Given that Black students are more likely to be low-income and

> *Given the incredible value of Black educators on Black students, we should . . . understand that racial educational equity can most closely be achieved with race affirmative policies.*

first-generation students, they are more likely to consider more lucrative career paths to offset tuition costs. Additionally, Black educators have the highest attrition rate of all racial groups, so even those that become teachers face difficulty staying in the profession. Less discussed, however, is the role of past policies which serve to perpetuate this challenge. The unintended consequences of *Brown* not only provide key evidence of the central role of Black educators within the United States public school system, but also warn us about the dangers of race-neutral

> *For Black students, the presence of Black teachers has been linked to improved attitudes toward their school, reductions in chronic absenteeism and school dropout rates, as well as increased levels of college enrollment.*

policies in attempting to partially correct the injustices of the past.

The Exodus of Black Educators After *Brown*

In 1954, the Supreme Court overturned the ruling in *Plessy v. Ferguson* and mandated that

all schools desegregate "with all deliberate speed." While the ruling in *Brown* marked a historic shift away from the intentionally anti-Black and segregationist educational policies preceding, it did little to ensure the protection of Blacks forced to integrate in its aftermath. This can be seen today as public schools are even more racially segregated now than they were prior to 1954.[7] Although *Brown*'s effect on students is central, it's harmful effect on Black educators is sometimes overlooked—particularly those in the south.

Due to *de jure* school segregation before *Brown*, which prohibited Black educators from teaching at all White schools, the vast

> *Because the schools serving Black students were underfunded, desegregation following [*Brown v. Board of Education*] often meant the closing of Black schools, not White schools. The Black instructors vacating their schools were met with hostility similar to the students who were integrating White schools."*

majority of instructors were the same race as their students. This is why in the 17 states with segregated school systems, 35 to 50 percent of all teachers were Black.[8] However, the decision in *Brown* to merely desegregate, with no recommendations, timeline, or enforcement measures to foster conducive educational environments led to the mass displacement and exclusion of Black educators throughout the South.

Because the schools serving Black students were underfunded, desegregation following *Brown* often meant the closing of Black schools, not White schools. The Black instructors vacating their schools were met

with hostility similar to the students who were integrating White schools. For displaced Black educators, many of their newly assigned districts simply did not renew their teaching contracts.[9] Furthermore, White educators were given the option to choose the school they wished to transfer to while Black educators were involuntarily assigned schools in White districts.[10] Once reassigned, Black teachers were often met with so much hostility that they were forced to leave.

The aftermath of these practices led to a massive reduction in the number of Black teachers, particularly in southern states, which were the fiercest enforcers of racial segregation. Overall, it is estimated that school districts transitioning from fully segregated to integrated resulted in a 32 percent decline of all Black educators following *Brown*.[11] This had devastating consequences for states in the South such as North Carolina, which witnessed a 96 percent decline in all Black faculty from 1965 to 1972.[12] This also translated to principals; the same period saw a 67 percent increase in White principals but a 30 percent decrease in Black principals.[13] In total, it is estimated that over 38,000 Black educators lost their jobs in the South and southern bordering states following the *Brown* decision.[14]

Targeted Investments Needed

The exodus of Black teachers in the South after Brown indicates that the Black educator gap is neither ahistoric nor coincidental. Rather, it is a multi-faceted issue stemming from a myriad of factors including the adoption of race-neutral language within the historic Brown decision. Thus, race affirmative policies must be adopted in order to begin alleviating structural challenges such as the Black educator gap.

First, targeted investments should be explored to provide additional tuition support for teacher preparation programs in order to reach and retain more prospective educators at all institutions. While students of color accounted for over 37 percent of individuals in institutions of higher education, they only accounted for 25 percent of those enrolled in teacher preparation programs; those identifying as Black account for even less.[15] Reducing the financial burden which disproportionately deters Black students would be an initial step toward shrinking the Black educator gap.

Additionally, investments must be made to expand "Grow Your Own" teacher preparation programs, specifically in partnerships between local school districts and HBCUs. "Grow Your Own" programs aim to provide a pathway for members of the local community to become licensed teachers by offering various supports such as professional mentorship, financial assistance for state examinations, and experiential opportunities for students in the program. Call Me MISTER is one of the prominent examples of a GYO program which has had great success in increasing the Black educator workforce.[16] With 13 chapters, this initiative is on track to double the number of Black male teachers in South Carolina since its creation.

Investments such as these are just a start to addressing the structural challenges contributing to racial disparities such as the Black educator gap. However, one thing is certain, the future of our Black youth is dependent upon policy being designed with greater urgency and intentionality than "with all deliberate speed." If we are committed to eliminating the barriers created by unabashed anti-Blackness, and merely transposed by race-neutral policies, then we must be even more courageous in adopting policies that affirm Blackness and position this affirmation at their very core.

Endotes

1. "The State of Teacher Diversity Executive Summary," Shanker Institute, 16 September 2015. http://www.shankerinstitute.org/resource/state-teacher-diversity-executive-summary

2. Sharif El-Mekki, "Don't Know The History of Black Teachers in America? Nate Bowling, A History Teacher, Is Here To School You," Philly's 7th Ward, 23 August 2018. https://phillys7thward.org/2018/08/dont-know-history-Black-teachers-america-nate-bowling-history-teacher-school/.

3. Madeline Will, "65 Years After 'Brown v. Board,' Where Are All the Black Educators? - Education Week," *Education Week*, 14 May 2019. https://www.edweek.org/ew/articles/2019/05/14/65-years-after-brown-v-board-where.html.

4. "Representation Matters: Why and How Virginia Should Diversify Its Teacher Workforce," The Commonwealth Institute, accessed 7 March 2020. https://thehalfsheet.org/post/186475365623/representation-matters-why-and-how-virginia

5. "The Long-Run Impacts of Same-Race Teachers," Institute of Labor Economics, accessed 10 March 2020. https://www.iza.org/publications/dp/10630.

6. "Representation Matters: Why and How Virginia Should Diversify Its Teacher Workforce," The Commonwealth Institute, accessed 7 March 2020. https://thehalfsheet.org/post/186475365623/representation-matters-why-and-how-virginia

7. Keith Meatto, "Still Separate, Still Unequal: Teaching about School Segregation and Educational Inequality," *New York Times*, 2 May 2019. https://www.nytimes.com/2019/05/02/learning/lesson-plans/still-separate-still-unequal-teaching-about-school-segregation-and-educational-inequality.html.

8. Madeline Will, "65 Years After 'Brown v. Board,' Where Are All the Black Educators? - Education Week," *Education Week*, 14 May 2019. https://www.edweek.org/ew/articles/2019/05/14/65-years-after-brown-v-board-where.html.

9. Ibid.

10. Ibid.

11. Owen Thompson, "School Desegregation and Black Teacher Employment," Social Science Research Network, 29 September 2017. https://doi.org/10.2139/ssrn.3045424.

12. "The Rise and Fall of Black Teachers and Principals in U.S. Public Schools Since Brown v. Board – Educ 300: Education Reform, Past and Present," Trinity College, accessed 5 March 2020. https://commons.trincoll.edu/edreform/2018/05/the-rise-and-fall-of-Black-teachers-and-principals-in-u-s-public-schools-since-brown-v-board/.

13. Ibid.

14. Deirdre Oakley, Jacob Stowell, and John R. Logan, "The Impact of Desegregation on Black Teachers in the Metropolis, 1970–2000," *Ethnic and Racial Studies* 39, no. 9 (2009): 1576–98. https://doi.

org/10.1080/01419870902780997.

15. "The State of Racial Diversity in the Educator Workforce," n.d., 42.

16. "Call Me MISTER Is Building the Next Generation of African American Male Teachers," W.K. Kellogg Foundation, accessed 10 March 2020. https://www.wkkf.org:443/what-we-do/featured-work/call-me-mister-is-building-the-next-generation-of-african-american-male-teachers.

Discriminatory Death: An Analysis of the Legislative Advocacy Against the North Carolina Racial Justice Act

Mara Roth

I am a 2019 graduate of Harvard College. During my time at Harvard, I joint- concentrated in Social Studies and African American Studies, taking classes that mainly centered on the intersection of race, law, and American politics. My studies culminated in my senior thesis on the North Carolina Racial Justice Act, which won both the Kathryn Ann Huggins Prize from the African American Studies Department, and the Thomas T. Hoopes Prize from the Faculty of Arts and Sciences.

Introduction

The disproportionate impact of legal injustice on the African-American community is uncontestable. From police brutality to over-sentencing, surveillance and discriminatory criminal disenfranchisement, explicit, implicit, and systemic bias has led to the over-punishing of Black bodies and revealed society's undervaluing of Black lives. Nowhere is this more prevalent than in the life-or-death realm of capital punishment.

As will be later discussed, the intricate relationship between race and American capital punishment is historically rooted. Then as today, race infiltrates nearly all aspects of capital proceedings, from who lives, to who dies, to who makes the decision. However, unlike in the past, modern bias in legal proceedings tends to be implicit and systemic, making it hard to explicitly prove. This bias is hugely consequential and demands an urgent response. Through an analysis of the political debates surrounding the North Carolina Racial Justice Act, this article explores the possibility for and ideas that stand in the way of legislatively addressing the impact of non-explicit bias in capital punishment and the criminal legal system.

The 2009 North Carolina Racial Justice Act (RJA) sought to address racial bias in death sentencing by permitting capital defendants to use statewide statistical evidence of racial disparities in capital

punishment to appeal their death sentences.[1] These disparities could concern the race of

> *Mock juror studies show that people hold stronger implicit associations between Blackness and guilt, than Whiteness and guilt, and that Black defendants tend to receive harsher sentences compared to White defendants who commit identical crimes—especially when these defendants have Afro-centric features or White victims.*

the defendant, the victim, or the individuals struck during jury selection.[2] Under the RJA, if a judge found this evidence persuasive, a defendant could be resentenced to life in prison without parole. This bill applied to all future capital defendants and stated that current death row inmates had one year to retroactively appeal their sentences under the RJA.[3] This radical reform, however, was not uncontested. Indeed, the RJA's initial passage was followed by four more years of vigorous debates and three repeal attempts, the last of which successfully repealed the RJA in 2013.

The RJA and the extensive political debates it provoked present the perfect opportunity to explore legislators' responses to policy that addresses the impact of implicit and systemic racial bias in capital punishment and the criminal legal system. This article in particular uses an analysis of all the legislative floor debates over the RJA—between its passage and repeal—to pick apart the logic[4] that was used to advocate against the RJA.[5] Ultimately, such analysis can provide insight into the political ideas that impede legislative efforts to address non-explicit bias in the capital and

criminal legal system and, in turn, how such obstacles might be overcome.

This article argues that the main logic used to oppose the RJA centered on specific arguments regarding the characterization of the legal system: its uniformity, impartiality, and primary purpose. RJA opponents asserted that the legal system's lack of uniformity prevented capital cases from being effectively compared through statistics, its impartiality made the RJA redundant and unnecessary, and the system's primary purpose of exacting retributive punishment made the RJA undesirable. While the first part of this article details the reasoning behind these claims, the second takes these arguments and applies pressure to them—specifically, explaining how such arguments about the legal system are deeply rooted in and reflective of anti-Blackness. The article concludes by suggesting how these findings can inform future efforts to confront systemic bias and anti-Black racial disparities in the criminal legal system.

Capital Punishment and Anti-Blackness

Before broaching the RJA debates, understanding the historic relationship between race and capital punishment is necessary. It is impossible to adequately summarize this fraught history only briefly, yet this section aims to touch on the most relevant ideas. Much scholarship has documented how race and capital punishment have been connected since the inception of American slavery. Indeed, slave states uniquely relied on public executions to maintain the system of chattel slavery: enchained slaves could not be punished with incarceration, so gruesome executions and "public display[s] of the corpses or body parts of those executed

for slave revolt, were [used] as dire warnings . . . about the harsh consequences of insurrection or violence against slave owners."[6] Moreover, throughout the nineteenth century, the exclusive use of capital punishment against Black Americans was codified in sentencing laws: while every single state reduced the number of crimes for which White defendants could be sentenced to death, the crimes—and attempted crimes—for which African-Americans could be executed remained numerous.[7] Even after the Civil War, states continued this trend by instituting Black Codes, which "served to punish African Americans by death for crimes that incurred lesser punishments for White offenders," and by allowing all-White juries absolute discretion over whether to implement the death penalty.[8] Consequently, capital punishment was almost only used against Black people with White victims. Some scholars also argue that around this time the domestic terrorism of lynching legitimized "racial violence by representing it as criminal punishment."[9] Whether capital punishment today represents modern lynching is a point of scholarly debate.[10] However it is notable that a state's history of lynching is one of the strongest predictors of its modern execution rate.[11]

The connection between race and the death penalty has retained salience in modern times. Studies spanning from the mid-1900's to today demonstrate that Black defendants and defendants with White victims are more likely to receive the death penalty, and that Black jurors are more likely to be struck from capital juries compared to their White counterparts.[12] These contemporary trends are not a direct result of explicitly racial laws and terrorism. Rather, extensive literature has established that entrenched bias is a main cause of capital sentencing disparities today.

Psychologists have demonstrated that implicit associations between Black Americans and danger or violence are not only pervasive, but consistent, automatic, and not necessarily associated with explicitly racist attitudes.[13] Mock juror studies show that people hold stronger implicit associations between Blackness and guilt, than Whiteness and guilt,[14] and that Black defendants tend to receive harsher sentences compared to White defendants who commit identical crimes—especially when these defendants have Afro-centric features or White victims.[15] Such bias is most prevalent in White jurors.[16] Studies have also shown that people's race as well as their racial biases correlate with their support for the death penalty: White people and people with more anti-Black racial bias tend to support capital punishment.[17]

Further research has demonstrated that legal actors' biases are amplified by systemic bias: procedures within the legal system

> *Psychologists have demonstrated that implicit associations between Black Americans and danger or violence are not only pervasive, but consistent, automatic, and not necessarily associated with explicitly racist attitudes.*

tend to promote racialized outcomes. For instance, an examination of guided-discretion policies—which supposedly prevent arbitrary sentencing—reveal that these regulations are immensely vague and ultimately legitimize the biased implementation of the death penalty. In Georgia, the death penalty can be imposed in the presence of aggravating factors, one of which is a finding that the crime "was outrageously or wantonly vile, horrible or inhuman."[18] Similar laws in Texas and Oregon permit jurors to implement the

death penalty based on their assessment of the defendant's "future dangerousness,"[19] while Idaho jurors can find that "the defendant exhibited utter disregard for human life."[20] Such vague and subjective guidelines leave ample room for biased ideas about dangerousness and guilt to pervade capital sentencing decisions.

Similarly, *Batson* rules supposedly protect against racialized jury selection by prohibiting attorneys from using race as a reason to strike jurors. However, to counter alleged *Batson* violations, attorneys must only "come forward with a neutral explanation for challenging Black jurors."[21] These explanations can be related to anything: jurors' apparent eagerness or lack of enthusiasm, their experiences as crime victims or lack thereof, appearing shy or confident.[22] Scholars are in agreement that attorneys' ability to strike jurors for any reason makes *Batson* protections inadequate because "it is far too easy to generate plausible, race-neutral justifications that leave judges no choice but to accept them."[23] Indeed, despite *Batson*, Black jurors face higher rates of exclusion from particularly capital juries compared to their White counterparts.[24] This has important implications, as research has found that diverse juries allow for more comprehensive deliberations, and ameliorate the impacts of bias.[25] Therefore, Batson rules present another procedure that gives apparent legitimacy to capital legal proceedings, while still leaving room for non-explicit bias to impact trials.

In allowing capital defendants to use statistical evidence of non-explicit bias to challenge their death sentences, the RJA confronted this entire history of racialized capital sentencing and modern bias in an unprecedented manner.[26] Knowledge of this history thus provides essential context and reveals the importance of investigating the logics that counteracted this progress and were used to argue against the RJA.

The following section takes on this analysis, demonstrating that the main logic behind RJA opposition concerns arguments regarding the nature of the legal system: its uniformity, impartiality, and primary purpose.

Uniformity

The use of statistical evidence to prove discrimination has been commonplace in civil rights law for decades.[27] However, before the North Carolina RJA, such use of statistics in criminal cases was nearly unprecedented.[28] It therefore makes sense that one of the biggest points of opposition to the RJA was the act's mobilization of statistical evidence. Throughout the RJA debates, proponents unceasingly asserted that the statistical comparison of capital cases could reveal systemic trends that, in turn, could play the essential role of filling in gaps where explicit evidence of unfair conduct might be missing. RJA proponents claimed that a general culture of racial bias pervaded North Carolina and the legal system, affecting the outcomes of capital cases.[29] They argued, however, that because this bias was rarely explicit, holistic statistics that revealed systemic trends would be a useful tool in uncovering it and proving its influence. Representative Paul Lubke summarized this basic argument in one debate when he asserted the following:

> [Racial disparity in capital sentencing] shows something about how unconsciously or consciously many in the criminal justice system are operating. It shows that when you actually get to the point there is plenty of prejudice and discrimination in the criminal justice system. But, you won't find people saying it . . . That's why, friends, we need to rely on statistics.[30]

RJA proponents thus advocated for the use of statistical evidence as an appropriate tool that

could be used to confront and account for how non-explicit bias impacted capital legal proceedings.

Alternatively, RJA opponents were wholly opposed to such use of statistical evidence. The main logic used to support this opposition was that a lack of uniformity across capital proceedings made it inappropriate to use data from various cases to determine anything about an individual case—namely, discrimination. Specifically, opponents argued that because each case had unique factors shaping its outcome, statewide information about other cases was extraneous, and could not be used to infer the determinants of a given case's outcome. This argument was expressed by legislators like Senator Phil Berger, who argued that case outcomes rely on "the specific instance of how a murder was committed, the specific facts of what happened on the day or the night that that incident occurred."[31] Berger protested that statistical data from other cases "may not have or probably has no particular relevance to the case at hand."[32] This reasoning was assumed by many other legislators who argued that statistics took the specific "decision of the jury . . . the work of the district attorneys, and the decision of that judge . . . [and threw] it in the trash can,"[33] while letting individuals introduce "statistics . . . from another part of the state hours away . . . that have nothing to do with [their] case to try to get out of a conviction."[34] Thus, the notion that the legal system was composed of distinct cases, with outcomes based on unique facts and decision making, undergirded RJA opponents' advocacy that a lack of systemic uniformity made the RJA's use of statistical evidence inappropriate.

This argumentation became particularly prominent as defendants started appealing their cases under the RJA. By 2011, nearly every death row inmate had filed for RJA relief.[35] Opponents seized on this moment to further their argument against RJA statistics, citing instances where they believed that defendants' specific case facts did not indicate that racial discrimination had impacted their sentencing. For instance, Representative Nelson Dollar advocated for the RJA's repeal, citing a White appellant who had "[W]hite victims . . . [W]hite lawyers, [a] [W]hite judge, [and] eight out fifteen jurors were [W]hite."[36] Dollar insisted it was inappropriate that this person could appeal under the RJA given that "race [was] no factor whatsoever in his jury, in his victims, and in the killer . . ."[37] In another debate, Representative Sarah Stevens described a similar White defendant with White victims who appealed under the RJA. She protested that, in using statistics about other cases, this defendant was "not going to have his [appeal] considered on the facts of the case," which presumably would not reveal racial bias.[38] Therefore, opponents pointed to ongoing RJA litigation to support their notion that the mobilization of holistic statistical evidence inappropriately allowed defendants to make claims based on data from other cases that were unrelated to their own unique trials.

It is important to note that this argumentation about systemic disunity and case specificity structured opponents' many attempts to repeal the RJA. In 2011, before the RJA's 2013 repeal, opponents unsuccessfully attempted to remove all language regarding statistical evidence from the bill.[39] In 2012, they successfully amended the act to state that statistical evidence could only come from the region where the case was tried, during the time it was tried, and had to be supplemented by explicit, case-specific evidence of racism.[40] As explained by Representative Skip Stam, this change improved the bill because "it gets the focus where it should belong: on the person who is alleged to be a first-degree murderer [and] on the

prosecution where the prosecution occurred and when it occurred, not in another century, not in another [place]."[41] Other legislators like Senator Buck Newton supported this change, stating that, "under this version . . . you can't use statistics from Clay County in order to prove racial bias in Wake County."[42] Thus, RJA opponents conceded that statistics that accounted for the distinct details of a case could potentially be relevant. Nevertheless, they still insisted that even cases within the same geographic region, tried by the same legal actors, around the

> *RJA opponents rebuked this notion, instead contending that, particularly in capital contexts, the criminal legal system's main purpose was to provide justice through punishment.*

same time, were too distinct to be comparable and used to inform one another. This idea was affirmatively represented by the additional stipulation that "statistical evidence alone is insufficient to establish that race was a significant factor" in one's trial, and that one must show "with particularity how the evidence supports a claim that race was a significant factor . . . in [their] case."[43] Thus, RJA proponents persisted in arguing that cases within the legal system were too individualized and distinct for data about different cases to be compared and used to inform one another.

Impartiality

The next main argument that opponents used to advocate against the RJA concerned the impartiality of the legal system. The RJA was born of the notion that racism impacted the outcome of capital cases. Legislators supporting the act not only argued that uncontrollable implicit biases impacted legal actors' decision making,[44] but that many actors were explicitly biased. Indeed, anecdotes regarding such bias arose throughout the debates: legislators cited a case in which a juror "used racial slurs and admitted in an affidavit that bigotry impacted his decision,"[45] and an RJA appeal which revealed that a prosecutor had written racialized notes about Black jurors.[46] These concerns about bias were compounded by proponents' insistence that existing procedural protections against the influence of racial bias were insufficient. While RJA proponents specifically stressed the insufficiency of *Batson* protections,[47] they also generally commented that systemic safeguards had not stopped the discrimination implied by numerous cases in which innocent Black defendants had been wrongfully convicted.[48] These proponents thus asserted that the RJA provided an essential addition to the system's currently ineffective safeguards against bias.

RJA opponents assumed an irreconcilably different line of reasoning. They argued that because the influence of racial bias was sufficiently controlled for in the legal system, the RJA was redundant and did not provide a needed safeguard against discrimination. Meeting proponents' claims head on, opponents argued against the bias of legal actors and promoted that current systemic protections were sufficient.

Several opponents drew on their experiences as attorneys to argue against the idea that bias impacted legal actors' decision making. While many claimed that they had never personally encountered racially biased actors,[49] others insisted that the requirement that legal actors justify their decisions based on specific facts prevented race from impacting legal decision making. For instance,

legislators like Representative Sarah Stevens explained that "there are very specific facts to get the death penalty, and there is not a person on death row that the jury has not found that they had prior criminal histories [or . . .] that the crime they committed was especially heinous . . . race doesn't and shouldn't matter."[50] Likewise, Representative Tim Moore promoted that it was "simply not appropriate" to say that race impacted prosecutorial decisions about who to strike from juries, because prosecutors' decisions were based on specific factors: "Maybe [the juror has] a criminal record. Maybe they know something about the case. Maybe they're related to someone involved. There are a number of factors."[51] Such comments illustrate opponents' logic that racial bias did not impact the decisions of legal actors because, in making decisions in capital cases, actors focused on the concrete facts that made a defendant death-eligible or a juror unqualified to serve: facts that leave no room for race to impact decisions.

To further support the idea that the RJA was unnecessary, opponents argued that extensive existing legal protections ensured that if bias did impact a case, it would be detected and addressed. Opponents' insistence on the sufficiency of *Batson* protections was particularly notable, especially in light of proponents' claims that this safeguard was inadequate. For instance, Senator Thom Goolsby forcefully stated his belief in the effectiveness of *Batson* protections:

> Any attorney who doesn't [file a *Batson* challenge], particularly in a death penalty case where they're representing a minority defendant, will very quickly find a motion filed against them . . . for ineffective assistance of counsel . . . The state has the requirement to proffer a race neutral reason for the strike. [The court then] assesses the state's proffered

reason and determines whether or not the defendant proved purposeful discrimination. I've heard a lot of talk about…people being taken off juries willy-nilly . . . that's not the way our courts currently function . . . we already have those protections in place.[52]

Here, Goolsby cited the potential for "ineffective assistance of counsel" complaints, the necessity of offering race-neutral justifications, and the court's responsibility to closely assess these justifications as safeguards that all ensure the effectiveness of *Batson* protections. In a different debate, Representative Skip Stam took Goolsby's point further, noting that all *Batson* decisions are "appealable to the North Carolina Supreme Court."[53] Therefore, in contrast to RJA proponents, opponents saw this act as providing an unnecessary addition to the already extensive protections against biased jury selection.

RJA opponents also argued that the legal system's other extensive protections against racial discrimination made the RJA unnecessary. For instance, Representative David Guice argued, "Individuals are protected [from] judicial bias based on race, color, religion, social and economic status, or national origin. I do not understand why we need an additional law . . . when these protections can already be found in the United States Constitution, the North Carolina Constitution and existing federal and state criminal procedure."[54] Concurring with this idea, other legislators cited appeals, habeas corpus relief, discovery laws, and North Carolina's Innocence Commission as among the "literally dozens of checkpoints" available to ensure that discrimination does not impact legal proceedings.[55] Opponents thus reasoned that because the legal system was already sufficiently impartial and protected from racial discrimination, the RJA was duplicative and unnecessary.

Primary Purpose

The final main argument that opponents used to attack the RJA concerned their notions about the criminal legal system's primary purpose—particularly in the capital context. According to RJA proponents, the overarching goal of the RJA was to promote fairness and objectivity in the legal system. This idea was well reflected by Representative Alma Adams in a debate over the act's final repeal: "The first priority of our criminal justice system . . . should be to ensure justice and fairness and to not uphold verdicts that have any hint of racial discrimination."[56] Indeed, many legislators concurred with this notion, citing that the RJA would crucially ensure due process, protecting capital defendants against bias and ensuring them a jury of their peers.[57]

RJA opponents rebuked this notion, instead contending that, particularly in capital contexts, the criminal legal system's main purpose was to provide justice through punishment. On this basis, they reasoned that the RJA was misguided because it undermined a focus on directly and expediently punishing individuals for their crimes.

Opponents derided the RJA for erroneously detracting from a focus on exacting punishment based on an individuals' crimes. Throughout the debates, opponents frequently cited the heinous details underlying the crimes committed by death row inmates. They protested that these "unspeakable, inhuman acts" should dictate punishment.[58] For instance, Representative J. Curtis Blackwood objected that with the RJA, "we're just muddying the water trying to bring in some other factors that didn't have any varying on the particular crime."[59] In this same vein, Senator Thom Goolsby contested:

> There's no question that [RJA appellants] committed murder, were convicted in courtrooms of murder, and were sentenced to death in courtrooms of murder. Now we're talking about Monday morning quarterbacking on a whole new extreme looking at statistics alone in order to [determine their sentencing] . . . That should disturb you greatly.[60]

Opponents thus argued against the RJA, reasoning that allowing statistical evidence to impact capital sentencing diminished—even rejected—the system's proper focus on retributive punishment.

Similarly, opponents condemned the RJA for stymying the imposition of just punishment. They claimed that, in addition to converting death sentences to life without parole, the RJA would put a moratorium on capital punishment. The argument that the RJA would be "abused to delay trials and . . . effectively end the death penalty," was common, with opponents citing the need to collect evidence, conduct hearings and appeals, and the prohibitive costs of hiring additional staff and analysts to prepare RJA cases.[61] Opponents argued that, in stopping or delaying executions, the RJA undermined the legal system's important task of providing retributive justice for victims. For example, Senator Thom Goolsby advocated that the state should do away with the RJA because there is "a moral obligation to ensure that death row criminals convicted of the most heinous crimes imaginable finally face justice . . . Victims' families have suffered far too long, and it's time to stop the legal wrangling and to bring them peace and the closure they deserve."[62] Likewise, while debating the act's initial passage, Representative Dale Folwell asserted that, in impeding capital punishment, the RJA denied justice to victims and their families by "reopening [wounds] that many of them have been trying for decades to close."[63] This sentiment was echoed by countless legislators, who frequently cited the names of

victims who they believed the RJA would harm.[64] RJA opponents thus argued that in stymying capital executions, the RJA erroneously undermined the legal system's primary purpose of exacting retributive punishment and justice.

A Closer Look and Steps Forward

This article's examination of the RJA debates demonstrates that opponents' advocacy against the RJA centered on arguments about the legal system: its uniformity, impartiality, and primary purpose. Before discussing the implications of these findings, it is important to put pressure on the reasoning opponents used to undermine the RJA.

Opposition to the RJA was supported by arguments about why the act conflicted with the nature of the legal system. Intriguingly, the logic of this opposition differs from that which has historically been used to argue against race-conscious anti-discrimination policies. Comprehensive social science research has demonstrated that such opposition has tended to focus on blaming racial disparities on the individual choices and behaviors of Black Americans.[65] This explicitly anti-Black argumentation, which ignores structural disadvantage in favor of notions about inherent racial inferiority, has been used to counter policies that would expand equal access to employment, housing, and educational opportunities.[66] Though such pathology-based logic is absent from the RJA debates, RJA opponents' reasoning is not free from a connection to and reflection of anti-Blackness.

It is worth noting that a close assessment of opponents' claims about the legal system's lack of uniformity and its impartiality reveal a disregard for the way implicit and systemic bias contribute to individual legal outcomes. Opponents' claims about systemic disunity inaccurately silo cases from their united context in a system with uniform rules and procedures which, as demonstrated in the beginning of this article, are known to impact how individuals navigate the legal system. As a result, statistics that speak to systemic trends and the way that rules and procedures promote certain outcomes for defendants are indeed relevant to individual cases. Further, opponents' faith in legal actors' ability to be impartial by focusing on

> *The above analysis does not claim to speak to the true intentions behind legislators' advocacy, nor does it assume their knowledge of the history belying their argumentation. Rather it speaks to the anti-Blackness that both undergirds and is reflected in the reasoning they used to advocate against the RJA.*

specific case facts demonstrates a lack of consideration for how implicit bias can impact how such facts are assessed: as previously outlined, research shows Black defendants tend to be perceived as more guilty and receive harsher sentences than White ones. Similarly, statements about the sufficiency of the legal system's protections against bias ignore the way that these protections, like *Batson* rules, still allow for bias to pervade legal decision making. The fact that significant racial disparities persist despite these protections is a testament to that.

This is all to say that the arguments that the legal system is not united and is impartial denies the insidious nature of systemic and implicit racism. Whether RJA

opponents had racial motivations when using this logic is beside the point. Most important is that opponents' disregard for the impact of non-explicit, systemic bias reflects the same disregard that has helped

> *A comprehensive understanding of the logic used to argue against the RJA combined with this subsequent analysis can be used to inform future efforts to legislatively address racial disparities in the criminal legal system.*

promote pathology-based arguments and undermine anti-discrimination policies in the past. Where structural disadvantage was denied in favor of racist, cultural arguments then, such disadvantage is ignored in favor of certain notions about the legal system here—in both cases, to advocate against policies that would ameliorate the grave impacts of anti-Black bias.

Also important to consider is the overriding interest in punishment and retribution undergirding RJA opposition. Legislators did not mention race nor indi-

> *While such conversations may not change the minds of those whose opposition is racially motivated, it could help in swaying individuals who hold unexamined beliefs about the legal system.*

cate that race motivated their arguments about the legal system's punitive purpose. However, their tough on crime argumentation does have a deeply racialized history. Scholars have thoroughly documented the

relationship between anti-Blackness and the rise of tough on crime rhetoric and policies in the twentieth century. For example, Michelle Alexander famously places this rise during Reagan's War on Drugs as part of a precalculated effort to maintain White supremacy and Black oppression through mass incarceration.[67] Meanwhile, in her groundbreaking scholarship historian Elizabeth Hinton claims that it started earlier, in the Kennedy and Johnson administrations. Like Alexander, however, Hinton maintains that the rise of this rhetoric and policy was rooted in race, specifically citing how, motivated by pathology-based beliefs about Black inferiority and fear of racial uprisings, welfare initiatives evolved into initiatives to over-police, over-punish, and ultimately criminalize and incarcerate Black individuals in urban communities.[68] Regardless of when it began, scholars agree that the pervasion of tough on crime rhetoric, and the racialized fear mongering accompanying it, was motivated by racism and ultimately resulted in a cultural shift towards extreme punishment.[69] The immense pressure to be tough on crime has led politicians of each party to assume this rhetoric and pursue policies that reflect it.[70]

Especially in the context of capital punishment, it is easy to look at politicians' retributive rhetoric and understand that they view the truly devastating acts of capital defendants as unforgivable. However, deeper analysis reveals that their argumentation—which deprioritizes procedural fairness and disregards the humanity of criminals—stems from a racially rooted and historically developed cultural attitude that demands that the legal system be punitive. The decision to dismiss and devalue those labeled "criminal" comes from a racial past.

The above analysis does not claim to speak to the true intentions behind legislators'

advocacy, nor does it assume their knowledge of the history belying their argumentation. Rather, it speaks to the anti-Blackness that both undergirds and is reflected in the reasoning they used to advocate against the RJA. A comprehensive understanding of the logic used to argue against the RJA combined with this subsequent analysis can be used to inform future efforts to legislatively address racial disparities in the criminal legal system.

The findings in this article allow activists to better understand and prepare for the arguments that stand in the way of legislatively addressing non-explicit bias in the criminal legal system. For instance, understanding RJA opposition directs enthusiasts of RJA-like reforms to pay attention to politicians' notions about the character of the legal system when supporting elected officials. It could also motivate activists to prepare for such opposition, by promoting broader discussions among elected individuals and community members about the impacts of implicit and systemic bias, and the racialized roots of certain notions about the legal system. While such conversations may not change the minds of those whose opposition is racially motivated, it could help in swaying individuals who hold unexamined beliefs about the legal system. Most importantly, however, these findings demonstrate a need to invigorate serious discussions about both racism and the humanity of individuals who have committed serious crimes. RJA opposition demonstrates a prioritizing of normative ideas about a system over the lives of Black Americans and people who have made grave, criminal mistakes. Significant steps are needed to overcome this, the most effective of which may include initiatives to increase proximity to people of different races and those in the criminal legal system. Only an investment in and a true understanding of the humanity of those who are marginalized and stigmatized, those who RJA-like reforms attempt to help, can change this prioritization. The above ideas represent only a few of the many ways activists can seize on these findings to promote more informed and successful efforts to legislatively address non-explicit racism in the criminal legal system. Armed with these insights, advocates can be equipped to see successful and persisting RJA-like reforms through and help realize America's aspirational promise of racial justice and equal treatment under the law.

Endnotes

1. The RJA was a response to the Supreme Court's infamous 1987 ruling in *McCleskey v. Kemp*. In this case, the Court declared that it could not accept statistical evidence of anti-Black racial disparities in capital punishment—evidence of implicit, systemic bias—as proof of racial discrimination, even though it accepted the validity of these statistics and the study that had produced them. The court however concluded its majority opinion by suggesting that the question of whether such evidence should be permitted to prove discrimination is "best presented to the legislative bodies." David C. Baldus et al., "McCleskey v. Kemp (1987): Denial, Avoidance, and the Legitimization of Racial Discrimination in the Administration of the Death Penalty," in *Death Penalty Stories*, ed. John H. Blume and Jordan M. Steiker (New York, NY: Thomson Reuters/Foundation Press, 2009). https://www.amazon.com/Death-Penalty -Stories-Law/dp/1599413434

2. North Carolina Racial Justice Act, S.B. 461, 2009-2010 Sess. (2009). In addition to statistical evidence, the act affirmed that "other evidence, including, but not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system" could also be used to make an RJA appeal. https://www.ncleg.gov/ BillLookup/2009/s461

3. Ibid.

4. For the purposes of this article, "logic" can be defined as structured, argumentative reasoning.

5. To arrive at the conclusions presented in this article, recordings from every single House and Senate floor debate over the RJA between its 2009 passage and its 2013 repeal were transcribed and analyzed. These recordings offered an explicit, comprehensive, and balanced picture of the arguments being made for and against the RJA. Recordings from the House debates were obtained from the North Carolina General Assembly website, while recordings from Senate debates were obtained from the North Carolina Senate Principal Clerk. These included all debates on the RJA's initial passage in 2009 as S.B. 461, its first repeal attempt in 2011 as S.B. 9, its second repeal attempt in 2012 as S.B. 416, and its ultimate repeal in 2013 as S.B. 306. The main arguments for and against the act remained extremely consistent between 2009 and 2013, so the most illustrative quotes were selected to be presented in this article. Footnotes can be consulted to determine which debates these quotations came from. Lastly, while this article does not make any causal arguments about the specific factors that drove the act's passage and repeal, it is important to note that RJA support was intensely partisan—with Democrats supporting and Republicans opposing—and that after the act's 2009 passage Republicans overtook the Democratic majorities in the House and Senate.

6. Carol S. Steiker and Jordan M. Steiker, *Courting Death: The Supreme Court and Capital Punishment* (Cambridge, MA: Harvard University Press, 2016), 17. https://www.amazon.com/Courting-Death -Supreme-Capital-Punishment/dp/0674737423

7. Stuart Banner, *The Death Penalty: An American History* (Cambridge, MA: Harvard University Press, 2002), 134-41. In states like Virginia, a White person could not be sentenced to death for "rape, attempted rape, kidnapping a woman, and aggravated assault..." A Black person could be sentenced to death for all of these transgressions, and only if the victim were White. https://www.amazon.com/Death-Penalty-American -History/dp/0674010833.

8. Sheri Lynn Johnson, "Coker v. Georgia: Of Rape, Race, and Burying the Past," in *Death Penalty Stories*, ed. John H. Blume and Jordan M. Steiker (New York, NY: Thomson Reuters/Foundation Press, 2009), 192. https://www.amazon.com/Death-Penalty-Stories-Law/ dp/1599413434

9. David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Cambridge, MA: Harvard University Press, 2010), 31. https://www.amazon. com/Peculiar-Institution-Americas-Penalty-Abolition /dp/0674066103.

10. Ibid., 34; Franklin E. Zimring, *The Contradictions of American Capital Punishment* (New York, NY: Oxford University Press, 2003), 90, 98; Bryan Stevenson, *Just Mercy* (New York, NY: Random House, 2014), 299.

11. Zimring, *The Contradictions of American Capital Punishment*, 66. https://www.amazon.com/Contradic tions-American-Capital-Punishment/dp/0195178203.

12. Michael L. Radelet and Glenn L. Pierce, "Race and Death Sentencing in North Carolina, 1980-2007," *North Carolina Law Review* 89 (2011), 2132-35. http://scholarship.law.unc.edu/nclr/vol89/iss6/6/; Baldus et al., *McCleskey v. Kemp*. https://www.ama zon.com/Death-Penalty-Stories-Law/dp/1599413434; Marvin Wolfgang and Marc Riedel, "Rape, Race, and the Death Penalty in Georgia," *American Journal of Orthopsychiatry* 45, no. 4 (1975): 658–68. https://www. ncbi.nlm.nih.gov/pubmed/1180346; Scott Phillips, "Racial Disparities in the Capital of Capital Punishment," *Houston Law Review* 45, no. 3 (2008) https://houston-lawreview.org/article/4878-racial-disparities-in-the-capi tal-of-capital-punishment: 807–40; Barbara O'Brien and Catherine Grosso, *Report on Jury Selection Study* (East Lansing, MI: Michigan State University College of Law, 2011). https://digitalcommons.law.msu.edu/facpubs/331/.

13. A growing body of research has shown that Americans automatically associate Blackness with crime related objects and vice versa, that they are more likely to see Black men as being larger, stronger and posing a greater threat than similarly sized White men, and in police shooter simulations, lay-people are quicker to shoot unarmed Black versus unarmed White suspects. Jennifer Eberhardt et al., "Seeing Black: Race, Crime, and Visual Processing," *Journal of Personality and Social Psychology* 87, no. 6 (2004): 876. ncbi.nlm.nih.gov/ pubmed/15598112; John Paul Wilson, Kurt Hugenberg, and Nicholas Rule, "Racial Bias in Judgements of Physical Size and Formidability: From Size to Threat," *Journal of Personality and Social Psychology* 113, no. 1 (2017): 59–80. https://www.researchgate.net/publica tion/317951449_Racial_bias_in_judgments_of_physi cal_size_and_formidability_From_size_to_threat; Yara

Mekawi and Konrad Bresin, "Is the Evidence from Racial Bias Shooting Task Studies a Smoking Gun? Results from a Meta-Analysis," Journal of Experimental Social Psychology 61 (2015): 120–30. https://www.sciencedirect.com/science/article/abs/pii/S0022103115000992

14. Justin Levinson, Huajian Cai, and Danielle Young, "Guilty by Implicit Racial Bias: The Guilty/Not Guilty Implicit Association Test," *Ohio State Journal of Criminal Law* 8, (2010): 187–208. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1471567

15. Ellen Cohn et al., "Reducing White Juror Bias: The Role of Race Salience and Racial Attitudes," *Journal of Applied Social Psychology* 39, no. 8 (2009): 1953– 73. https://www.researchgate.net/publication/229500573_Reducing_White_Juror_Bias_The_Role_of_Race_Salience_and_Racial_Attitudes1; Irene V. Blair, Charles M. Judd, and Kristine M. Chapleau, "The Influence of Afrocentric Facial Features in Criminal Sentencing," *Psychological Science* 15, no. 10 (2004): 674–79. https://www.ncbi.nlm.nih.gov/pubmed/15447638; Jennifer L. Eberhardt et al., "Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes," *Psychological Science* 17, no. 5 (2006): 383–86. https://www.ncbi.nlm.nih.gov/pubmed/16683924

16. Samuel R. Sommers, "On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations," *Journal of Personality and Social Psychology* 90, no. 4 (2006): 600. https://www.researchgate.net/publication/7131261_On_Racial_Diversity_and_Group_Decision_Making_Identifying_Multiple_Effects_of_Racial_Composition_on_Jury_Deliberations.

17. Lawrence D. Bobo and Victor L. Thompson, "Racialized Mass Incarceration: Poverty, Prejudice, and Punishment," 336-41 in *Doing Race: 21 Essays for the 21st Century*, edited by H.R. Markus and P.M.L. Moya, (New York: Norton, 2010). https://hull.rl.talis.com/items/79069591-BD05-64E2-02D7-91F3A1C06606.html; Justin D. Levinson, Robert J. Smith, and Danielle M. Young, "Devaluing Death: An Empirical Study of Implicit Racial Bias on Jury-Eligible Citizens in Six Death Penalty States," *New York University Law Review* 89, (2014): 513–81. https://www.nyulawreview.org/issues/volume-89-number-2/devaluing-death-an-empirical-study-of-implicit-racial-bias-on-jury-eligible-citizens-in-six-death-penalty-states/; James D. Unnever, Francis T. Cullen, and Cheryl Jonson, "Race, Racism, and Support for Capital Punishment," *Crime and Justice* 37, no. 1 (2008): 45–96. https://www.journals.uchicago.edu/doi/abs/10.1086/519823?journalCode=cj.

18. Steiker and Steiker, *Courting Death*, 159. https://www.amazon.com/Courting-Death-Supreme-Capital-Punishment/dp/0674737423

19. "Deadly Speculation: Misleading Texas Capital Juries with False Predictions of Future Dangerousness," The American Civil Liberties Union, ACLU, last accessed February 2020, https://www.aclu.org/other/deadly-speculation-misleading-texas-capital-juries-false-predictions-future-dangerousness

20. Steiker and Steiker, *Courting Death*, 160. https://www.amazon.com/Courting-Death-Supreme-Capital-Punishment/dp/0674737423

21. Batson v. Kentucky, 476 U.S. 79 (1986). https://supreme.justia.com/cases/federal/us/476/79/

22. Kenneth J. Melilli, "Batson in Practice: What We Have Learned about Batson and Peremptory Challenges," *Notre Dame Law Review* 71, (1996): 447–503. https://scholarship.law.nd.edu/ndlr/vol71/iss3/3/

23. Samuel R. Sommer and Michael I. Norton, "Race and Jury Selection: Psychological Perspective on the Peremptory Challenge Debate," *American Psychologist* 63, no. 6 (2008): 534. https://www.researchgate.net/publication/23259188_Race_and_Jury_Selection_Psychological_Perspectives_on_the_Peremptory_Challenge_Debate.

24. O'Brien and Grosso, *Report on Jury Selection Study*. https://digitalcommons.law.msu.edu/facpubs/331/; Dax-Devlon Ross, "Bias in the Box: For Capital Juries Across America, Race Still Plays a Role in Who Gets to Serve," *Virginia Quarterly Review* 90, no. 4 (Fall 2014): 196. https://www.vqronline.org/reporting-articles/2014/10/bias-box

25. Sommers and Norton, "Race and Jury Selection," 529. https://www.researchgate.net/publication/23259188_Race_and_Jury_Selection_Psychological_Perspectives_on_the_Peremptory_Challenge_Debate.

26. In 1988, a Racial Justice Act was introduced into the U.S. House of Representatives but, after several years, was ultimately neglected in 1994 amidst the political turmoil of Bill Clinton's Crime Bill. In this same year, the cause for passing a Racial Justice Act was picked up in Kentucky. The Kentucky Racial Justice Act was passed in 1998 and remains on the books today. However, the use of statistics permitted by the Kentucky law is stunted by severe restrictions, such as their use being limited to only pre-trial motions against prosecutorial decision making, and the condition that statistics had to be specifically related to the defendant's particular case. Justin R. Arnold, "Race and the Death Penalty after McCleskey: A Case Study of Kentucky's Racial Justice Act," *Washington and Lee Journal of Civil Rights and Social Justice* 12, (2005): 95-8. https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1191&context=crsj; Alex Lesman, "State Responses to the Specter of Racial Discrimination in Capital Proceedings: The Kentucky Racial Justice Act and the New Jersey Supreme Court's Proportionality Review Project," *Journal of Law and Policy* 13, (2005): 377-87. https://brooklynworks.brooklaw.edu/jlp/vol13/iss1/15/

27. Baldus et al., *McCleskey v. Kemp*. https://www.amazon.com/Death-Penalty-Stories-Law/dp/1599413434

28. See footnote 26.

29. Audio Tape. House Second Reading – S.B. 416: Amend Death Penalty Procedures (June 12, 2012), https://www.ncleg.gov/.; Audio Tape. House Second Reading – S.B. 306: Capital Punishment/Amendments (June 4, 2013), https://www.ncleg.gov/.

30. Audio Tape. House Third Reading – S.B. 416: Amend Death Penalty Procedures (June 13, 2012),

https://www.ncleg.gov/.

31. Audio Tape. Senate Motion to Concur – S.B. 461: North Carolina Racial Justice Act (Aug 5, 2009), (on file with the Senate Principal Clerk).

32. Ibid.

33. Audio Tape. House Second and Third Reading – S.B. 9: No Discriminatory Purpose in the Death Penalty (June 16, 2011), https://www.ncleg.gov/.

34. Ibid.

35. "Letter from Susan I. Doyle to Sen. Berger (Nov. 14, 2011)," at 1, State v. Timon Charles Golphin, 815 S.E.2d 374 (N.C. 2018) (No. 441A98-4) (exhibit from November 29, 2016 hearing) (record on file with Kenneth Rose at the Center for Death Penalty Litigation).

36. Audio Tape. House Second Reading – S.B. 306: Capital Punishment/Amendments (June 4, 2013), https://www.ncleg.gov/.

37. Audio Tape. House Second Reading – S.B. 416: Amend Death Penalty Procedures (June 12, 2012), https://www.ncleg.gov/.

38. Audio Tape. House Second Reading – S.B. 306: Capital Punishment/Amendments (June 4, 2013), https://www.ncleg.gov/.

39. No Discriminatory Purpose in Death Penalty, S.B. 9, 2011-2012 Sess. (2011).

40. Amend Death Penalty Procedures, S.B. 416, 2011-2012 Sess. (2012).

41. Audio Tape. House Second Reading – S.B. 416: Amend Death Penalty Procedures (June 12, 2012), https://www.ncleg.gov/.

42. Audio Tape. Senate Second and Third Reading – S.B. 416: Amend Death Penalty Procedures (June 20, 2012), (on file with the Senate Principal Clerk).

43. Amend Death Penalty Procedures, S.B. 416, 2011-2012 Sess. (2012).

44. Audio Tape. Senate Second and Third Reading – S.B. 9: No Discriminatory Purpose in the Death Penalty (Feb 10, 2011), (on file with the Senate Principal Clerk).; Audio Tape. House Third Reading – S.B. 416: Amend Death Penalty Procedures (June 13, 2012), https://www.ncleg.gov/.; Audio Tape. House Second Reading – S.B. 416: Amend Death Penalty Procedures (June 12, 2012), https://www.ncleg.gov/.

45. Audio Tape. House Second and Third Reading – S.B. 9: No Discriminatory Purpose in the Death Penalty (June 16, 2011), https://www.ncleg.gov/.

46. Audio Tape. House Second Reading – S.B. 306: Capital Punishment/Amendments (June 4, 2013), https://www.ncleg.gov/.

47. Audio Tape. Senate Second and Third Reading – S.B. 416: Amend Death Penalty Procedures (June 20, 2012), (on file with the Senate Principal Clerk); Audio Tape. House Second Reading – S.B. 306: Capital Punishment/Amendments (June 4, 2013), https://www.ncleg.gov/.

48. Audio Tape. House Second Reading – S.B. 461: North Carolina Racial Justice Act (July 14, 2009),

https://www.ncleg.gov/.

49. Ibid.

50. Audio Tape. House Second Reading – S.B. 306: Capital Punishment/Amendments (June 4, 2013), https://www.ncleg.gov/.

51. Audio Tape. House Third Reading – S.B. 416: Amend Death Penalty Procedures (June 13, 2012), https://www.ncleg.gov/.

52. Audio Tape. Senate Veto Override – S.B. 9: No Discriminatory Purpose in the Death Penalty (Jan 4, 2012), (on file with the Senate Principal Clerk).

53. Audio Tape. House Veto Override – S.B. 416: Amend Death Penalty Procedures (July 2, 2012), https://www.ncleg.gov/.

54. Audio Tape. House Second Reading – S.B. 461: North Carolina Racial Justice Act (July 14, 2009), https://www.ncleg.gov/.

55. Audio Tape. House Veto Override – S.B. 416: Amend Death Penalty Procedures (July 2, 2012), https://www.ncleg.gov/.; Audio Tape. House Third Reading – S.B. 306: Capital Punishment/Amendments (June 5, 2013), https://www.ncleg.gov/.; Audio Tape. House Second Reading – S.B. 461: North Carolina Racial Justice Act (July 14, 2009), https://www.ncleg.gov/.

56. Audio Tape. House Second Reading – S.B. 306: Capital Punishment/Amendments (June 4, 2013), https://www.ncleg.gov/.

57. Audio Tape. House Second Reading – S.B. 461: North Carolina Racial Justice Act (July 14, 2009), https://www.ncleg.gov/.; Audio Tape. Senate Second and Third Reading – S.B. 306: Capital Punishment/Amendments (April 3, 2013), (on file with the Senate Principal Clerk).

58. Audio Tape. House Second Reading – S.B. 416: Amend Death Penalty Procedures (June 12, 2012), https://www.ncleg.gov/.

59. Audio Tape. House Second Reading – S.B. 461: North Carolina Racial Justice Act (July 14, 2009), https://www.ncleg.gov/.

60. Audio Tape. Senate Veto Override – S.B. 9: No Discriminatory Purpose in the Death Penalty (Jan 4, 2012), (on file with the Senate Principal Clerk).

61. Audio Tape. House Second Reading – S.B. 306: Capital Punishment/Amendments (June 4, 2013), https://www.ncleg.gov/.; Audio Tape. House Second and Third Reading – S.B. 9: No Discriminatory Purpose in the Death Penalty (June 16, 2011), https://www.ncleg.gov/.; Audio Tape. Senate Motion to Concur – S.B. 461: North Carolina Racial Justice Act (Aug 5, 2009), (on file with the Senate Principal Clerk).

62. Audio Tape. Senate Second and Third Reading – S.B. 306: Capital Punishment/Amendments (April 3, 2013), (on file with the Senate Principal Clerk).

63. Audio Tape. House Second Reading – S.B. 461: North Carolina Racial Justice Act (July 14, 2009), https://www.ncleg.gov/.

64. It should be noted that this emphasis on justice for

victims was to the exclusion of any mention of justice for death row defendants who, as previously mentioned, were seen as heinous criminals. Audio Tape. House Second Reading – S.B. 306: Capital Punishment/Amendments (June 4, 2013), https://www.ncleg.gov/.

65. Lawrence D. Bobo and Ryan A. Smith, "From Jim Crow Racism to Laissez- Faire Racism: The Transformation of Racial Attitudes," in *Beyond Pluralism: The Conception of Groups and Group Identities in America*, ed. Wendy Katkin, Ned Landsman, and Andrea Tyree (Urbana, IL: University of Illinois Press, 1998). https://www.amazon.com/Beyond-Pluralism-Conception-Identities-America/dp/0252066855; Donald R. Kinder and Lynn M. Sanders, *Divided by Color: Racial Politics and Democratic Ideals* (Chicago, IL: University of Chicago Press, 1996). https://www.amazon.com/Divided-Color-Politics-Democratic-Political/dp/0226435741; Eduardo Bonilla-Silva, *Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in the United States*, 2nd ed. (Lanham, MD: Rowman and Littlefield Publishers, 2006). https://www.amazon.com/Racism-without-Racists-Color-Blind-Persistence/dp/1442202181; Richard A. Apostle et al., *The Anatomy of Racial Attitudes* (Berkeley: University of California Press, 1983), 96-97. https://www.amazon.com/Anatomy-Attitudes-Charles-Marijean-Suelzle/dp/B000SQI7D8; James R. Kluegel, "Trends in Whites' Explanations of the Black-White Gap in Socioeconomic Status, 1977- 1989," *American Sociological Review* 55, no. 4 (1990) https://www.jstor.org/stable/pdf/2095804.pdf?seq=1; Desmond S. King and Rogers M. Smith, *Still a House Divided: Race and Politics in Obama's America* (Princeton, NJ: Princeton University Press, 2011) https://www.amazon.com/dp/B005CQAJ9Y/ref=dp-kindle-redirect?_encoding=UTF8&btkr=1.

66. King and Smith, *Still a House Divided*. https://www.amazon.com/dp/B005CQAJ9Y/ref=dp-kindle-redirect?_encoding=UTF8&btkr=1

67. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY: The New Press, 2012), 92-119. https://www.amazon.com/dp/B07N8H53Z8/ref=dp-kindle-redirect?_encoding=UTF8&btkr=1

68. Elizabeth Hinton, *From the War on Poverty to the War on Crime*: The Making of Mass Incarceration in America (Cambridge, MA: Harvard University Press, 2016). https://www.amazon.com/War-Poverty-Crime-Incarceration-America/dp/0674737237

69. Alexander, *The New Jim Crow; Hinton, From the War on Poverty to the War on Crime*; Manning Marable, *How Capitalism Underdeveloped Black America: Problems in Race, Political Economy and Society* (Chicago, IL: Haymarket Books, 2015). https://www.amazon.com/How-Capitalism-Underdeveloped-Black-America/dp/0896085791; Khalil Muhammad, *The Condemnation of Blackness* (Cambridge, MA: Harvard University Press, 2010). https://www.amazon.com/dp/B07SSMC589/ref=dp-kindle-redirect?_encoding=UTF8&btkr=1

70. Alexander, *The New Jim Crow; Hinton, From the War on Poverty to the War on Crime*.

"Anti-racism is the active process of identifying and eliminating racism by changing systems, organizational structures, policies and practices and attitudes, so that power is redistributed and shared equitably."

Institutional Anti-Racism & Accountability Project

HARVARD Kennedy School
SHORENSTEIN CENTER
on Media, Politics and Public Policy

The Institutional Anti-Racism & Accountability (IARA) Project at Harvard Kennedy School's Shorenstein Center on Media, Politics and Public Policy works at the intersection of community programs, academia, and policy to address intellectual and practical questions related to anti-racist institutional change. Our vision is to achieve industry-wide certification standards for all forms of diversity/bias/ antiracism consulting and implementation.
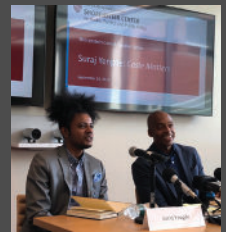
Learn more at
shorensteincenter.org/iara