

Race and Crime: Geographies of Injustice

Instructor Manual

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Overview:

Each chapter contains a list of learning outcomes, key terms with their definition, a brief chapter summary, a list of suggested short answer and long answer exam questions, sample discussion items, in-class exercises, and suggestions for further reading.

Powerpoints with chapter materials, plus chapter figures are included alongside this companion.

Chapter 1--Race, Crime, and Justice: Definitions and Context

LEARNING OUTCOMES

- Explain what mass incarceration is and how it impacts race in the United States today.
- Summarize the connection between racialized mass incarceration and strides toward racial justice in United States.
- Define terms key to understanding race, crime and justice in the United States.
- Demonstrate how race and crime are socially constructed.

KEY TERMS

- mass incarceration - a rate of imprisonment that is markedly above the historical and comparative norm” for a given society. With mass incarceration, imprisonment “ceases to be the incarceration of individual offenders and becomes the systematic imprisonment of whole groups of the population.”
- coloniality - refers to the processes by which colonial-era mechanisms of power were subsumed and integrated into the social order. Coloniality consists of two dominant practices: (1) violent geographical appropriation of resources, places, and people and (2) racial and patriarchal knowledge production.
- sovereign force - refers to the process by which rulers use instruments of violence—conquest, war, and even the criminal justice system—to rule over others. In colonial conquest, sovereign force meant the violent appropriation of people and places for the health, wealth, and continued domination of the sovereign.
- state power – the use of government intervention, regulation and violence over the everyday governance of society
- knowledge production - refers to the methods by which truth claims are asserted and the processes by which those claims are bolstered and disseminated.
- premature death-- the systematic and institutional organization of the early death of many nonwhites, especially black Americans
- social construction - is meaning making by society. The social construction of race thus means that it is—and can be—built through institutional structures, ideological struggle, and individual proclivities and habits. Race emerges from these meaning-making

processes, and this textbook provides an understanding of how the meaning-making processes that constitute race came to infuse and permeate issues and institutions of crime and justice.

- white supremacy - refers to the larger structural practices by which whiteness as a system of lived advantage and privilege is reproduced and sustained.

CHAPTER SUMMARY

With the passage of the Civil Rights Act, affirmative action, and the election of the first black president in 2008, many today assume that we live in a post-racial era. However, this is not the case. This book tells the story of how the criminal justice system became the newest institution managing racial governance in the United States.

The United States is the leader of mass incarceration in the world, unprecedented, unparalleled, and anomalous. In a country that is over 77% white, more than 60% of people in jail and prison are persons of color. Incarceration has become a normal part of the life course for some groups, disproportionately affecting the lives of men in brown and black communities.

In this chapter, we examine how racial inequalities present today are the result of practices that began in the colonial era and make up what we call coloniality. Coloniality consists of two dominant practices: 1) violent geographical appropriation of resources, places, and people, and 2) racial and patriarchal knowledge production. Today, coloniality is alive and well and State violence mimics that of colonial conquest and slavery in many ways.

Chapter 1 also introduces students to the ways in which race as a structure of power was central to European colonial expansion and still organizes power relations today. In our analysis, race is not biology, culture, class, and is not reducible to color racism. Race is a socially constructed system of classification that organizes the world's population into a hierarchy of human/nonhuman. As race is socially constructed, so is crime. What gets defined as a crime, and what society determines is deserving of state violence are two ways in which crime is socially constructed. In this book, both race and crime are inextricably tied.

EXAM QUESTIONS

- *Short answer*
 - How is crime socially constructed and what is an example of the social construction of crime?
 - What are two concepts race is not and what is the definition of race, according to Brown and Barganier?
 - What is COMPSTAT and how does it reflect the tenets of coloniality?
 - Define coloniality and give one example.
 - What are some of the consequences at the community level of mass incarceration?
 - What is white supremacy according to Brown and Barganier and how does their definition differ from popular conceptions?

- *Long essay*
 - Define mass incarceration and explain why it is considered the newest example of coloniality.

IN CLASS EXERCISES

- *Exercise 1: The formation of racial identity*
 - Have students individually write on the following prompt: When did you first learn that you had a “race”?
 - Instruct students to share in groups, and then ask them to determine what are some similarities and what are some differences in experiences
 - Follow up with an entire class discussion in which some students are asked to share experiences, and groups share what were the commonalities and differences
 - Use the discussion of commonalities and differences to draw out three points:
 - Race is relational; we learn we have a race through our interactions with other
 - Race is about knowledge production about who we are: filling out race on forms, having people say what race we are or assuming particular things about us because of our race, etc.
 - Race is institutional: learn through interactions with school, etc. (Thus, race is embedded and foundational to many of the structures we interact and participate in)
- *Exercise 2: The social construction of crime*
 - Have students examine the penal code of different states or the federal government related to particular crime (prohibitions on assault or drug crimes such as marijuana, for instance). Have students answer:
 - What is the definition of the crime in the penal code? Are there elements that make that particular crime more serious?
 - How does the definition of the crime change between states?
 - How does the punishment of the crime change between states?
 - Emphasize:
 - Crime must be socially constructed and thus depends on states to define, which means people through voters, legislators and law; that’s why variance between states
 - Crime must also be punished, but the severity also reflects social values; punishment of crime in states often reflects local values (i.e. prohibitions versus legalization of marijuana; can also emphasize state relationship with federal government and competing jurisdictions here)

DISCUSSION TOPICS

- *Reasonable racism*: How have Supreme Court cases established 'reasonable racism' in the law? Do you think a legal doctrine of reasonable racism is good Supreme Court practice given racial practices amongst society? Can you think of any ways that 'reasonable racism' pervades everyday practice? Or put another way, how do you think race and racist ideas shape how people make assumptions about people and spaces?
- *Resurgence of white supremacy*: Have students review a news article about events in Charlottesville, such as:
 - <https://www.nytimes.com/2017/12/12/us/charlottesville-protest-permit-denied.html>
 - <https://www.cbsnews.com/pictures/white-supremacist-rallies-in-charlottesville-virginia/>
 - <https://www.cbsnews.com/news/charlottesville-white-nationalists-richard-spencer-torch-lit-protest/>
 - <https://www.nytimes.com/video/us/100000005360556/white-supremacist-symbols-charlottesville.html>
- Have students reflect on events of Charlottesville. Were they surprised by these events? If so, what surprised them? If not, why not? Share as a class. Consider: how should society respond to these events? Should white supremacists be allowed to march and protest? Should these actions be considered illegal or even crimes?

FURTHER READING

- Allen, Robert. 2005. "Reassessing the Internal (Neo)Colonialism Theory." *Black Scholar* 35, no. 1 (Spring): 2-11.
- Coates, Ta-Nehisi. 2013. "Trayvon Martin and the Irony of American Justice." *Atlantic*, July 15, 2013. www.theatlantic.com/national/archive/2013/07/trayvon-martin-and-the-irony-of-american-justice/277782/.
- Gilmore, Ruth Wilson. 2006. *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*. American Crossroads 21. Berkeley: University of California Press.
- Quijano, Aníbal. 2000. "Coloniality of Power, Eurocentrism and Latin America." *Nepantla: Views from the South* 1, no. 3: 533-80.
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Chapter 2--Race, Colonialism, and the Emergence of Racial Democracy

LEARNING OUTCOMES

- Explain what colonialism is and how it structured a global economy based on race.
- Analyze the impact of colonialism on the newly emerging democratic state form.
- Illustrate how enslavement, westward expansion, and U.S. imperialism abroad were based on racial logics.
- Summarize how colonial endeavors that led to the accumulation of wealth in Western Europe and the United States continue to facilitate national development today.
- Describe the construct of coloniality and explain its impact on the development of the United States, particularly white racial identity.

KEY TERMS

- colonialism - the occupation and domination of a foreign territory and people.
- papal bull - an order or decree of the church, similar to a law or regulation defining a new state policy
- Valladolid debate - the first debate on colonialism and human rights in European history. The Valladolid debate established the two main discourses of racism that would shape the way we have thought about race for the past 450 years: (1) the idea of nonwhites as nonhumans who can be exploited and even eliminated, and (2) the idea that those subhumans may be redeemable, able to be civilized and assimilated.
- global economy – interconnected practices of buying and selling goods across national borders.
- capitalism - an economic system based on private ownership and the accumulation of resources.
- feudalism - an economic system where people labored on behalf of a landowner in exchange for the ability to settle the land. This economic system was dominant before the Industrial Revolution but began to decline with the emergence of global networks of trade.

- indentured servitude - a contractual term of service in which someone agrees to work for another for a period of time in exchange for food, clothing, and shelter.
- slave codes - were separate legal codes for enslaved people that generally, as demonstrated above, considered both white and black people in their application. This legal construction defined enslaved people as less than human.
- manifest destiny – a concept coined by a newspaper editor in the 1800s to describe the spirit of United States colonization across what is now known as the western United States. This spirit is based on three tenets: white U.S. citizens were especially virtuous; the lands of the “west” were wild and untamed and needed domestication; and it was the destiny of the United States to accomplish this domestication.
- Indian Removal Act - legislation that allowed the president of the United States to remove indigenous peoples from the South to federal territory west of the Mississippi.
- Trail of Tears - a series of violent, forced relocations that indigenous peoples were forced to undergo in order to satisfy white settlers’ desire for wealth accumulation and profit.
- white man’s burden - a term first coined by English poet Rudyard Kipling. This term articulated the idea that U.S. imperialism was a benevolent civilizing project that brought progress to backward people and places.
- imperialism - a policy of expanding U.S. power through military force, as a benevolent civilizing project.
- zones of being and nonbeing - A concept developed by revolutionary philosopher Frantz Fanon. For Fanon, the racial line serves as the marker that distinguishes the humanity of the European colonial forces from the nonhumanity of indigenous peoples. Under colonialism, if you are white, you are human and your legal rights are recognized. If you are colonized, you are nonhuman and you have no rights.

CHAPTER SUMMARY

In this chapter, we examine the rise of European colonial expansion and its role in the emergence of race as a categorization of humans. We introduce the historical development of coloniality, as a structure of power relations. *Colonialism*, the occupation and domination of a foreign territory and people, gave rise to *coloniality*, a structure of power that continues to have significance today.

Religious authority was a key component to the emergence of colonialism. Papal bulls, decrees of the Church that regulated policy, played a central role in the conceptualization of racial difference. In the 15th century, a series of papal bulls were issued that would give political

authority to European powers over foreign territories and peoples. These decrees were critical to the division of power in colonialism and served as a foundation for later conceptions of race. The Valladolid debate, a religious debate over the matter of indigenous humanity, helped to establish race as a structure of power that organizes human beings into a hierarchy of human and non-human. Although this emerged from the actions of the Church, this structure would provide a foundation for racial classification on a global scale.

In the US, this racial logic would provide the rational for the violent appropriation of land and resources and be consolidated through slavery, Westward Expansion, and US imperial projects. Coloniality provides a framework for interpreting this history and its connection to race and the reproduction of power relations. In the subsequent chapters, we examine the ways in which coloniality continues to shape our world today.

EXAM QUESTIONS

- *Short answer*
 - What role did religious authority play in European colonial expansion?
 - What is capitalism and feudalism?
 - How did slavery establish a global economy?
 - What were slave codes and how were they different from other laws?
 - How did the construct of humanity shape both religious and colonial enslavement?
 - What types of knowledge production were integral to the slavery era economy?
 - What is manifest destiny and how did it facilitate westward expansion?
 - What is imperialism and how were racial ideas used for imperial expansion?
 - What is the white man's burden and how does it conceive of whiteness?
- *Long essay*
 - What are zones of being and nonbeing and how do they relate to the structure of race?
 - Slavery, westward expansion, and imperial conquest all worked together to establish the tenets of whiteness. How did these three processes construct white identity and what were the social, legal, economic, and political logics used to create white racial domination during this period?

IN CLASS EXERCISE

- *Exercise 1: Race and the social construction of civilization*
 - Begin by asking students to define the word "civilized" and list traits, behaviors and ideas we associate with civilization;
 - Next, watch *Race the Power of an Illusion, Part 2: The story we tell*

- Ask students to reflect on how race was used to rationalize inequality, and form the economic basis of the U.S.
- Revisit the list of “civilized” traits
 - Ask students to reflect on whether any of the ideas of “civilization” are related to the foundational ideas of race

DISCUSSION TOPICS

- *Race and humanity today*: Is the notion of racial difference articulated in the Valladolid debate of human/nonhuman still with us today? How so? What are some examples?
- *Coloniality and the college campus*: In what ways do you see coloniality operating in on your college campus? Is there a relationship between the names of places, campus buildings or even academic departments and colonialism?

FURTHER READING

- Baptist, Edward E. 2016. *The Half Has Never Been Told: Slavery and the Making of American Capitalism*. New York: Basic Books.
- Dussel, Enrique. 1995. *The Invention of the Americas: Eclipse of “the Other” and the Myth of Modernity*. New York: Continuum.
- Fanon, Frantz. 1963. *Wretched of the Earth*. New York: Grove Press.
- Fanon, Frantz. 1967. *Black Skin, White Masks*. New York: Grove Press.
- Garrison, Tim Alan. 2002. *The Legal Ideology of Removal: The Southern Judiciary and the Sovereignty of Native American Nations*. Athens, GA: University of Georgia Press.
- Grosfoguel, Ramón. 2003. *Colonial Subjects: Puerto Ricans in a Global Perspective*. Berkeley: University of California Press.
- Roberts, Dorothy. 2012. *Fatal Invention: How Science, Politics, and Big Business Re-create Race in the Twenty-First Century*. New York: New Press.

Chapter 3-- The History of Racial Science: Social Science and the Birth of Criminology

LEARNING OUTCOMES

- Outline the scholarly development of the concept of race.
- Illustrate how intellectual thinking about race reflected a white, male, propertied perspective.
- Explain how intellectual thinking about race shaped the idea of racial superiority and threat.
- Summarize how the field of criminology emerged directly from the field of racial science.
- Show how theories of racial degeneracy, born criminality, and eugenics contributed to transformations in ideas about race and crime.

KEY TERMS

- Enlightenment- the era that gave birth to the ideas of rationality, progress, and reason and saw political revolutions against monarchies and religious authority.
- social science – is the use and application of the techniques, rationalities, and ideologies of natural science first developed during the Enlightenment to the study of the social world.
- scientific method – a process that produces knowledge about the world through systematic observation and experimentation.
- ideology of objectivity – assumes investigations can be carried out without subjective influences or bias.
- Sociology – the study of man as a social entity
- Positivism – the idea that all rational assertions must be able to be scientifically verified.
- scientific racism – the period of scholarly inquiry in which race was believed to have a biological origin and the scientific method was used to classify people into distinct races.
- taxonomy – a hierarchical system of classification where each order is thought to build upon and extend lower orders.

- Anthropometry – The practice of measuring bodily traits
- racial naturalism – is the belief that race stems from innate, biological differences and not from social, geographical, or cultural conditions.
- Polygenism – is the idea that the various races emerged independently, each from its own original type.
- racial historicism – reflects a belief that races developed from unique historical circumstances.
- Monogenism - the idea that all races stemmed from a single species
- Phrenology – a short- lived racial science that used anthropometrical measurements of the human skull to generate insights into a person’s character, potential, and moral development.
- theory of degeneration – posits that the environment and other external factors can cause the decline of an organism.
- deviance – behaviors or actions that violate social norms.
- atavistic criminal - a term developed by Cesare Lombroso. Lombroso defines the atavistic criminal as one “who reproduces . . . the ferocious instincts of primitive humanity and the inferior animals.”
- eugenics – was a scientific theory and a social program that emerged in the late 1800’s, aimed to improve humanity by breeding out undesirable characteristics.

CHAPTER SUMMARY

This chapter traces the impact of ‘racial science’ on the modern field of criminology, tracing the concern with the “born criminal” from Cesare Lombroso to the emergence of eugenics, phrenology, and other forms of anthropometric measurement. Modern social science is rooted in the Enlightenment, the era that gave birth to the ideas of rationality, progress, and reason. With the emergence of the Enlightenment, the tools of the scientific method were used to demonstrate supposed differences between racial groups and provided scientific justification for colonial exploits. This system of knowledge provided the framework for racial science and criminology as a discipline.

Scientific racism emerged in a period of scholarly inquiry in which race was believed to have a biological origin and the scientific method was used to classify people into distinct races. Racial taxonomies, racial naturalism, and racial historicism, were key to the development of scientific racism. Taxonomy is a hierarchical system of classification, where each order is

thought to build upon and extend lower orders. Racial taxonomies were based on colonial encounters and used to explain racial difference. Racial naturalism is the belief that race stems from innate, biological differences and not from social, geographical, or cultural conditions. Racial historicism reflects a belief that races developed from unique historical circumstances, and the hierarchical order of races have emerged from different positions within the historical ladder. While racial naturalism explains racial difference through biology, racial historicism attributes differences between races to historical circumstances. These two traditions form the basis for the modern study of deviance. Deviance is defined as behaviors or actions that violate social norms. Criminology as a scholarly field is concerned with the study of deviances that are defined as crime by a society.

Cesare Lombroso's construction of the criminal borrowed techniques and ideas first developed by racial scientists. Lombroso explicitly connected the degeneration supposedly exhibited by criminal types to racial hierarchies and nonwhite people. Lombroso's work and the birth of criminology emerged from the convergence between scientific racism and the theory of degeneration. While Lombroso's work is discredited today, it led to ideas of racial degeneracy and crime that remain salient within criminology today.

EXAM QUESTIONS

- *Short answer*
 - What is the difference between monogenism and polygenism?
 - What is a taxonomy and how were taxonomies important to establishing scientific racism?
 - How were cultural ideas of European superiority reflected in racial scientists work?
 - What is the theory of degeneration and why was it important for transforming racial thinking?
 - How did the theory of degeneration influence the birth of criminology?
 - What is eugenic criminology and why was it different from previous scientific racist theories?
- *Long essay*
 - How did anthropometry influence the development of scientific racism and the field of criminology?
 - What is racial naturalism and racial historicism and what is the history of these terms? How did the transition from theories of racial naturalism to racial historicism influence the focus on the *social* conditions of crime and criminality?

DISCUSSION TOPICS

- *Police and DNA:* A geneticist at the University of Arizona is developing a predictive test for skin, eye and hair color. He found a total of five genes that account for 76% of the variation for hair color, 75% for eye color and 46% for skin color. A new program called DNAwitness seeks to allow law enforcement agencies to capitalize on this technology by using DNA from crime scenes to identify the racial heritage of the person. Law enforcement would only need to send in a DNA sample to the program in order to receive a report with the likely racial makeup of the suspect. In groups, answer the following questions: Is this a technology that the police agencies should adopt? What might be the benefits? Dangers? Is this an example of racial naturalism, in your opinion? If so, why and if not, why not?
- *Collecting racial statistics:* In 1992, after concern about how racial crime statistics were being used to claim that nonwhite Canadians committed more crime, the Canadian government banned the collection of racial crime statistics. As a result, no racial statistics have been gathered for twenty-five years. Today, the very same political group that led the push to ban the compilation of racial statistics is calling for their renewed collection. Given the attention to the #BlackLivesMatter movement in the United States, Canadian media outlets, including the *Toronto Star*, and political agitators have begun calling for the release of racial crime statistics. Yet these statistics do not exist. And trying to determine race through other means—such as news stories about particular incidents—is next to impossible, as media outlets often scrub racial identification. This presents a problem for those concerned about the racial disproportionality of police violence. While many people suspect that black Canadians are overrepresented as victims of police shootings, use of force, and arrest, there exists little data to *prove* it. Consider:
 - Did Canada make the right decision to limit the use of racial crime statistics? Should racial crime statistics be collected?
 - Does our ability to confront crime diminish without the use of racial crime statistics?
 - Does our ability to police the police diminish without racial crime statistics?

IN CLASS EXERCISE

- *Exercise 1: The resurgence of eugenics*
 - Ask students to read “Can your genes make you kill?” in *Popular Science*.
 - Ask them to do a short writing reflect (either in class or as homework assignment) about the following questions:
 - Should ethicists be worried about interest in the biological science of crime?
 - Do you think research like this constitutes scientific racism? Why or why not?
 - In groups, ask students to share individual reflections and consider whether legislation should be adopted to limit or prevent research into the biological

origins of crime. Ask them to construct arguments on both sides and come to a group consensus.

FURTHER READING

- Dean, Mitchell. 2010. *Governmentality: Power and Rule in Modern Society*. Thousand Oaks, CA: Sage.
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Chapter 4--Social Problems and the U.S. Racial State

LEARNING OUTCOMES

- Explain why the United States is called a racial state.
- Summarize the role of urbanization and industrialization in the emergence of new state institutions and powers and the transformation of racial governance.
- List the key political, economic, and geographical conditions that led to the emergence of criminal justice institutions.
- Analyze how new state powers institutionalized racial governance and led to the creation of the juvenile court and the uniformed urban police.
- Describe the transition from racial domination to racial hegemony in state governance.

KEY TERMS

- social problems – refers to problems considered so undesirable that they should be corrected, such as poverty or domestic abuse.
- racial state – the institutions of the government – such as the legal system and state and federal agencies – work to maintain racial hierarchies, homogeneity, and racial power.
- state racism - the logic that “society must be defended” from a “race that is ceaselessly infiltrating the social body” (Foucault 2003, 61); practices of government that seek to counteract this threat are examples of state racism as they seek to eradicate, expel, and eliminate internal foes as the military does to external ones
- racial hegemony – is the process whereby dominant racial worldviews, such as whiteness in the United States – are reproduced through state and social practices.
- whiteness – a collection of traits and predilections that are often used to define white people as exceptional from others
- industrialization – is the transformation of a society from one based largely on farming to one based on manufacturing.
- urbanization – a process that occurred when primarily rural-based societies transform into ones where the majority of people live in cities.

- tenements – apartment buildings hastily and shoddily built, often by industrialists, in the progressive era to address industrialization and urbanization; were typically dark, stuffy, and crowded, with often several families occupying a single apartment
- Progressivism – was a theory of government that, at its core, envisioned the state as responsible not just for protecting society by, for instance, providing national security but for making the future of society through active intervention.
- ideology of expertise – the idea that we should defer to people who have expert knowledge or skills.
- race suicide – was a “Progressive Era term for the process by which racially superior stock (‘natives’) is outbred by a more prolific, but racially inferior stock (immigrants)”
- white slavery – a narrative which argued that women were kidnapped, transported to cities, and forced into sexual slavery. The idea of white slavery was primarily responsible for the passing of the Mann Act in 1910.
- black codes – laws that criminalized the mere existence of black people in the South.
- vice districts – areas where “immoral” amusements predominated

CHAPTER SUMMARY

In this chapter, we examine how the proliferation of social scientific knowledge, within a context of rapid urbanization and industrialization, set the stage for the emergence of key pillars of the U.S. as a racial state. This chapter also explores how these political, economic, and geographical conditions led to the emergence of criminal justice institutions. We use racial state to mean that institutions of government work to maintain racial hierarchies, homogeneity, and racial power. A key point in this chapter is that the US remained a racial state even as explicitly defined forms of racial domination such as Jim Crow segregation withered away. Structural white supremacy has continued despite a more inclusive definition of citizenship. This has happened in a context where racialized subjects have been identified and defined as social problems, particularly during the Progressive Era.

Progressive Era projects aimed at correcting social problems associated with industrialization and urbanization played a key role in the development of criminal justice institutions. Progressivism was a theory of government that envisioned the state as responsible for protecting society and making the future of society through active intervention. Perceived threats which emerged during a period of industrialization and urbanization led to the defining of groups as social problems that needed to be dealt with through state interventions. Industrialization is the transformation of a society from one based largely on farming to one based on manufacturing. Urbanization happens when primarily rural-based societies transform into ones where the majority of people live in cities. Threats of immigration arose from the

conditions of industrialization and urbanization and drew a response from Progressive Era leaders.

These new, Progressive Era conceptions of the state had several consequences for the development of the criminal justice system and early criminologists were influenced by racial scientists. Progressive Era legislation represented a new direction for state power. This power continues today through state agencies that are designed to maintain social problems. The power of white supremacy continues through the practice of racial hegemony that identifies most social problems with poor and communities of color today.

EXAM QUESTIONS

- *Short answer*
 - What is progressivism and how did it shift the role of government?
 - How does immigration policy reflect the racial state and the preconceptions of whiteness?
 - How was whiteness conceived by immigration policy?
 - How did the Progressive era create the modern racial state?
 - Why were urbanization and industrialization necessary for the emergence of new state institutions and powers, such as the juvenile court and the uniformed police?
 - What is the logic of eugenics and what were some social policies supported by eugenic theory?
 - What role did the environment play in creating social problems in urban areas, according to both Progressive and Eugenic social reformers?
- *Long essay*
 - Foucault argues that the modern discourse of race is one that depends on a 'society must be defended' logic, or what is defined in the textbook as 'state racism.' What is 'state racism', what are some examples of the 'society must be defended' logic in practice and how is this logic present in tactics of racial management in the Progressive era?
 - What is a social problem and how does the definition of social problems in the Progressive era reflect ideologies of whiteness and racial hegemony?
 - [question covers chapter 3 and 4] How did the theory of eugenics reflect the tenets of scientific racism and why did the vestiges of eugenics continue even as political reformers turned to the social, and not biological, causes of crime?

IN CLASS EXERCISES

- *Exercise 1: The impact of immigration policy today*

- Have students listen or read to the story of Carlos Pacheco at <https://www.nytimes.com/2017/12/26/reader-center/juan-carlos-hernandez-pacheco.html>
- Have students consider the following hypothetical scenario
 - Carlos Pacheco entered the U.S. when he was six years old with a green card. Once an adult, Pacheco was convicted of three counts of shoplifting—for stealing Tylenol and cigarettes. Since his misdemeanors were subject to a year sentence, under the IIRIA, they constituted ‘aggravated felonies’. The U.S. instituted deportation proceedings. Pacheco appealed to the Supreme Court, arguing that the 8th amendment prohibition against cruel and unusual punishment should vacate his deportation for criminal convictions.
- Place students into small groups and have them consider the case:
 - Your group is the Supreme Court. Consider Pacheco’s case and issue a ruling answering the following question: are a Supreme Court justice. Should Pacheco’s deportation stand?

DISCUSSION TOPICS

- *Social inequality and the role of government:* Why would you argue that the government **does not** have an obligation to alleviate class and race difference in the U.S.? Why would you argue that government **does** have an obligation? How would Progressive era reformers answer this question? Explain your answers thoroughly.
- *Immigration and crime:* Despite the rhetoric around immigrants and crime, the evidence paints a vastly different picture. One recent study showed that urban neighborhoods that are recipient of new immigrant residents actually have less crime than neighborhoods of white, native-born citizens (Ewing, Martinez, and Rumbaug 2015). Newcomers to the United States are less likely to commit crime than native-born citizens, and this “holds true especially for the Mexicans, Salvadorans, and Guatemalans who make up the bulk of the undocumented population” (Riley 2015). Studies show further that incarceration rates are lower among the undocumented, with native-born citizens between two and five times more likely to be incarcerated than immigrants. Though this reality has been demonstrated over the long term and for at least four decades, immigration policy is relentless in deporting permanent residents who have committed even minor crimes. This has resulted in deportations for traffic offenses of people who have lived nearly their entire lives in the United States (Guliani 2014). Some cities, like San Francisco in the 1980s, have responded to this type of enforcement by declaring “sanctuary city” status and instructing all city officials not to cooperate with federal officials regarding immigration enforcement. Sanctuary status means that if someone undocumented is arrested, city officials decline to notify immigration authorities. Should the federal government continue its practice of deporting any immigrant who is convicted of a crime? Should cities continue to adopt sanctuary policies, or should city

authorities be forced to cooperate with federal immigration officials? Should sanctuary cities have their federal funding cut? How does the debate about sanctuary cities and immigration illustrate the contestation over the racial state?

FURTHER READING

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Chapter 5--Housing Inequality and the Geography of Residential Racial Segregation

LEARNING OUTCOMES

- Summarize the role of law and policy in creating the geographies of racial segregation both historically and today.
- Analyze the role of housing in white wealth accumulation.
- Describe the transition from legally mandated to private-market-driven racial segregation.
- Explain why segregation continues today and how it contributes to the issues of mass incarceration.

KEY TERMS

- Jim Crow laws - emerged throughout the southern United States after the Reconstruction era and created a separate legal code specifically targeting nonwhites, especially black people and Native Americans.
- neighborhood effect – a concept developed by sociologist Robert Sampson that argues that despite changing policies, economic contexts, and political transformations, neighborhoods have an enduring effect on the lives of people who live in places of high residential mobility, concentrated poverty, and invidious racial discrimination. This effect leads some people and places to be regarded as more criminal by police, the public, and policy makers.
- urban planning – comprehensive plans by city officials to impose order: creating residential, business, and industrial zones; mandating the forms buildings, sidewalks, and the built environment could take; and creating arterial roads and enabling mobility through the city. Key to this process was preventing the development of slum areas and containing and eliminating existing ones.
- zoning – the process by which cities determine appropriate land uses.
- exclusionary zoning – uses local power to regulate building stock and land uses in order to prevent certain types of uses and character

- expulsive zoning – expelled controversial land uses – industrial manufacturing centers, public works projects, and dumps—from “desirable” neighborhoods and located them in “undesirable” neighborhoods.
- blockbusting – Practice of real estate agents to turn over racial composition of neighborhood; Would warn white residents of impending “black invasion”; white residents sold at lower prices; would turn around and resell to black residents at inflated prices; profited off white racial fears and black economic exclusion
- restrictive covenants – Racially restrictive covenants were defined in 1946 as “agreements entered into by a group of property owners, sub-division developers, or real estate operators in a given neighborhood, binding them not to sell, lease, rent or otherwise convey their property to specified groups because of race, creed, or color for a definite period unless all agree to the transaction.”
- redlining – refers to places colored “red” on HOLC maps and that were considered highest risk for insuring mortgages and thus were prevented from getting FHA insured loans
- white flight – The movement of whites from the city. It marks the creation of a new era of metropolitan racial segregation.
- public housing – housing provided by state agencies and is generally provided to low-income residents at little or no cost.
- urban renewal – Urban development renamed; State process of clearing urban residential areas due to “blight”; Often led to decreased housing stock and turning over of residential areas to new uses; Nicknamed “negro removal”
- blight – refers to neglected urban areas

CHAPTER SUMMARY

Chapter 5 explores the role of law and policy in creating the geographies of racial segregation and how it contributes to the issue of mass incarceration. Racial geographies were critical to the provision of federal funding and through the collusion of state actors, private business persons and individual preference of white Americans, a new racial era fueled by housing patterns emerged in the post-WWII era.

While the Civil Rights Act of 1964 formally ended public racial segregation, segregation continues today as a result of centuries of racial wealth accumulation. Housing segregation in particular, is central to the study of race and crime as it has facilitated the development of mass incarceration.

Urban planning during the Progressive Era provided the foundation for the continuation for residential segregation in the 20th century. Urban governments established city planning departments to remedy perceived threats associated with slum areas. Residential segregation ordinances were passed which imposed racial segregation. As racial segregation ordinances were struck down, city governments continued to create racially segregated neighborhoods through policing powers. This was done through the power of zoning, the process by which cities determine appropriate land uses and many city councils implemented zoning restrictions that created racial segregation. Racially restrictive covenants that barred owners from selling to whomever they chose, based on racial background, and often applied to entire neighborhoods or property developments ensured the survival of racial segregation.

Beginning in the 1930s, federal agencies played an instrumental role in creating and continuing racially segregated residential communities. Federal housing incentives, the federal freeway system, urban renewal programs and the creation of public housing further entrenched cultural, political, and economic divides around racial lines. White flight and the decline of black neighborhoods were accelerated by federal investments in suburban housing and processes of urban renewal. Together, these practices resulted in increased racial segregation and white family wealth accumulation that continue to shape housing preferences, perceptions of neighborhoods, and metropolitan demographic trends occurring today.

EXAM QUESTIONS

- *Short answer*
 - Why does it matter where you live?
 - What is the neighborhood effect and what impact does it have on people's lives?
 - What were the key racial narratives used to create both mandated and private-fueled racial segregation?
 - What is mandated racial segregation, why was it struck down and how did cities and localities continue to influence the racial composition of neighborhoods?
 - How did "slum clearance" policies contribute to racial residential segregation?
 - What is the role of white racial violence in creating metropolitan segregation?
 - How did urban planning contribute to racial segregation in the modern city?
 - How did the federal government create the suburbs?
- *Long essay*
 - What were the key state policies that created racial residential segregation and what was the role of white citizens in the process?
 - How did the creation of metropolitan racial segregation contribute to white supremacy and white wealth accumulation?

IN CLASS EXERCISES

- *Exercise 1: Cognitive maps of the city*
 - o Cognitive mapping is the process of charting the mental experience of a place on a map.
 - o Have students draw their map of a neighborhood town or city. Guidelines:
 - Does not have to be to scale
 - Label map
 - Mark spaces you feel comfortable in, places to avoid, and mark times if this changes throughout day/night
 - o Individual reflection
 - What do you know about nature of built environment and population in area?
 - What do you know about informal and formal social control of the area?
 - Does this impact your cognitive map?
 - o In groups, consider:
 - What are the similarities and differences between your maps?
 - Are there places that are unanimously comfortable? Dangerous?
 - Does familiarity with the city shape the cognitive map?
 - Can you draw any larger conclusions?
 - o Finally, compare these maps to maps at T-Races or Socialexplorer. Consider: do students ideas about spaces reflect any broader trends in racial segregation?
- *Exercise 2: Racial segregation today*
 - o Have students view maps of racial segregation for cities nearby. Some sources:
 - https://www.washingtonpost.com/graphics/2018/national/segregation-us-cities/?noredirect=on&utm_term=.c9aa789ff96b
 - Socialexplorer.com
 - <http://umich.edu/~lawrace/understandingmaps.htm>
 - o Have students compare these to maps of foreclosures:
 - <https://www.zillow.com/foreclosures/>
 - <https://www.realtytrac.com/>
 - o Have students consider the following questions:
 - How do the maps of racial segregation compare to maps of foreclosures?
 - How do the contemporary maps compare to the historical valuation of city spaces?
 - What are popular ideas about the neighborhoods in these maps and do they reflect historical ideas about race and space?

DISCUSSION TOPICS

- *Police and schools:* Recent reports of school violence have led citizen groups to advocate for police officers in some schools. One such group, “Citizens for safe schools”, organized and placed police officers in the three high schools with the most disciplinary

actions in Idealtown, USA. These three high schools are by all accounts also intensely segregated (over 90% students of color) and account for over 98% of the town's students of color. The group "Citizens for racial equality" formed in response. According to this group, the presence of police officers subjects students of color to increased criminal justice surveillance and will likely result in applying criminal justice penalties to school disciplinary problems. This group cites a study that shows that the presence of police officers in other schools has led to criminal infractions for incidents previously dealt with through school disciplinary mechanisms (fights now labeled as "assault", theft now labeled as "robbery", etc.). Citizens for racial equality have entered into a lawsuit against the school district, arguing that placing police officers in these three schools is a violation of the intent of *Brown* and the 14th Amendment guarantee of equal protection. According to the group, police officers' presence in schools subject students of color to a de facto "separate but equal" system of punishment and discipline. Imagine you are a sitting judge. How would you rule on this case? Does the presence of police officers in some schools violate the protections against unequal treatment in schools promised by *Brown*?

- *Public housing and crime*: Critics of concentrating the poor in vertical ghettos argue that it actually increases crime rates. They suggest that instead of public housing, we should more forcefully integrate metropolitan areas and move poor people into middle-class neighborhoods. Studies find that when this happens, crime does not increase in these neighborhoods. Should the government force racial and economic integration through its housing policies? Why or why not?
- *Reparations for state policies*: Given how federal state policies created white wealth accumulation, critics have called for the state to pay reparations to affected non-white families. Read *The case for Reparations by Ta-Nehisi Coates*. Discuss: Should the U.S. government pay reparations for its role in creating racial residential segregation?

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Chapter 6: The Problem of Urban America: Race and the Emergence of Mass Incarceration

LEARNING OUTCOMES

- Explain how the criminalization of drugs set the stage for the racialization of crime and the emergence of mass incarceration.
- Describe the emergence and development of the law and order discourse and its impact on the criminal justice system.
- Summarize the role that political elites and repression played in creating mass incarceration.

KEY TERMS

- social problems – Often a social problem is discovered. The discovery of the social problem gains traction and the issue is amplified often drawing some form of state intervention.
- postwar racial liberalism – views race as the product of personal and psychological battles
- War on Poverty – illustrates the problem of postwar racial liberalism. It was a wide-ranging governmental approach.
- culture of poverty - the idea of urban areas as rife with crime, violence, and deviant and pathological personalities.
- Southern strategy – a discourse of crime that redefined crime as the province of pathological people, rather than social conditions, and called for a strong, punitive response from the state.
- law and order discourse – dominated political constructions of crime, facilitated mass incarceration, and is an important rhetorical tool.
- Moynihan Report – produced in 1965, the report examined the “widening” gap between black people and whites in the US. Assistant Secretary of Labor Patrick Moynihan attributed the gap to the “tangle of pathology” found in black communities.
- COINTELPRO – a series of covert operations leveled at U.S. citizens who had been deemed subversive by the FBI.

- War on Drugs - a strategy articulated by President Nixon that formed the basis for a vast reorientation of the federal approach to law enforcement and the creation of a unified system of surveillance throughout the nation. Going far beyond the policing of drugs, these changes targeted a vast network of political activists.
- Law Enforcement Assistance Administration (LEAA) – a federal agency tasked with providing monetary, educational, and technological assistance to local law enforcement agencies.

CHAPTER SUMMARY

Chapter 6 explores how the invocation of urban social problems in the 1960s led to the emergence of mass incarceration. We cover the history of urbanization and race in the U.S. and its role in the emergence of mass incarceration.

Urbanization, industrialization, and immigration all brought demographic, political, and economic challenges to white supremacy.

Social concern about cocaine, opium, and marijuana masked white racial anxieties about these demographic changes and channeled this anxiety into racial hysteria about drugs. From early anti-Chinese legislation to the criminalization of cocaine, the supposed fear around drugs have frequently influenced state actions. Nixon's law and order campaign and war on drugs was one such state intervention.

The southern strategy was a discourse of crime that would become known as the law and order discourse; it redefined crime as the province of pathological people, rather than social conditions, and called for a strong, punitive response from the state.

In an era when communities of color were described as sites breeding pestilence and depravity, law and order discourse that would come to dominate political constructions of crime. Although masked as a strategy to maintain order, these policies were in reality designed to repress radical black politics that had developed in many cities in the U.S. While the Watts rebellion led to law enforcements emphasis on riot control and the need to contain urban unrest, black radicalism also signaled the militarization of the police.

The war on drugs initiated unprecedented changes in the criminal justice system in the United States and political repression against the civil rights movement laid the framework for mass incarceration and the criminal justice system.

EXAM QUESTIONS

- *Short answer*
 - Mass incarceration has been described as “the New Jim Crow” and is, in part, the result of the war on drugs. Describe the criminalization of drugs in the history of the U.S., how this criminalization is connected to practices of racialization, and why this has resulted in mass incarceration.

- What is the Southern strategy and how did it begin the criminalization of race associated with mass incarceration?
- What role did political repression play in the militarization of the police?
- What were the common racial narratives used to criminalize opium, cocaine and marijuana historically?
- How did demographic transitions impact the criminalization of drugs?
- What role does the protection of white womanhood play in racial panics?
- What is postwar racial liberalism and how did it contribute to the beginning of mass incarceration?
- How has race been pathologized by the discovery of “social problems”?
- What is the law and order discourse and what are its main tenets?
- How does the Watts neighborhood in Los Angeles illustrate the social, political, economic and geographical conditions that gave rise to the law and order discourse and mass incarceration?
- How did drugs remake the criminal justice system?
- How does SWAT demonstrate the militarization of U.S. policing?
- How did the crack moral panic facilitate the criminalization of race in U.S. cities?
- In what ways was the war on drugs politically and/or economically motivated? How has the fear of drugs served to mask actual fears of communities of color over the generations? What are some historical examples?
- *Long essay*
 - One of the most important contemporary examples of how life experiences are shaped by race is the development of racialized mass incarceration through the law and order discourse of crime. What is the law and order discourse and why is it argued to have racialized undertones? How did the law and order discourse reflect the broader historical and geographical realities of the time period? How does the law and order discourse reinvent historical and legal understandings of race? In your opinion (be sure to explain your position thoroughly by reviewing the three dominant definitions discussed in class), does the current criminal justice system constitute an example of racism in action?
 - In a recent article published by Deborah Small, she contends that the ‘war on drugs is a war on racial justice.’ Contemporary criminal justice policies are the continuation of entrenched historical practices that are often premised on the violent exclusion of non-whites. For Small, the contemporary war on drugs is also a war on racial minorities. This war is waged through the operation of ‘common sense’, hegemony, and behavioral norms that are informed by a primarily white middle class identity. By contrast, another set of scholars, like Randall Kennedy, argue that labeling the war on drugs a racial war is a misinformed understanding of contemporary criminal justice policy. Instead, Kennedy argues that the black community suffers just as much from ‘under-protection’ as ‘over-enforcement’ in criminal law. He asserts that the war on drugs is not a misguided idea per se, but should be more evenly applied. Kennedy argues that ending individual discrimination in the system will alleviate racial injustice completely. In terms of the war on drugs, Kennedy questions

whether we should condemn its policies entirely. He asks, “on balance, is the black community hurt...or helped” by the imprisonment of drug users? Kennedy argues that the war on drugs represents an instance in which the criminal justice system, as a whole, acts to protect the black community. In your paper, respond to the assertion that the ‘war on drugs is a war on racial justice’ by answering the following questions in an essay: What is the relationship historically between racial stereotypes and drug laws? What is the national and international impact of contemporary drug laws? How do these laws reflect the broader assumptions of U.S. drug policy (and how do they *not* reflect the assumptions of other countries)? Why would authors like Cole and Butler argue that the war on drugs is a war on racial justice? By contrast, why would one argue, like Kennedy, that the war on drugs does more to protect rather than harm communities of color? In your opinion, is the contemporary war on drugs a war on racial justice? Why or why not?

IN CLASS EXERCISE

- *Exercise 1: War on drugs today*
 - View
 - Frontline’s episode on meth, “The Meth Epidemic,” at www.pbs.org/wgbh/pages/frontline/meth/.
 - Consider:
 - How does this documentary contribute to the racialized politics of meth?
 - How does it reflect the discourses of law and order used to criminalize black and brown communities?
 - Reflecting on the social construction of white identity, are there other types of moral panics that work in the same way that campaigns against meth do?

DISCUSSION TOPIC

- *Political repression and mass incarceration*: COINTELPRO resulted in false imprisonments and murders of US citizens such as Chairman Fred Hampton of the Black Panther Party. Politically motivated acts of murder orchestrated by governments against their own citizens, is referred to as *state terrorism*. Do you believe COINTELPRO should be defined as a state terrorist program? Why or why not?

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Chapter 7: Policing the City

LEARNING OUTCOMES

- Examine the evidence for race-based policing, and explain why the specific practice of the investigatory stop contributes to the continuation of coloniality through policing practice.
- Illustrate how race-based policing practices are justified in constitutional cases.
- List the major components of the professional era of policing, and identify how this reform movement created the mechanisms for institutionalized racism in police today.
- Describe the impact of the policing transition from the professional era to the order maintenance era on policing urban communities.
- Summarize how the culture of policing today shapes the hyperpolicing of communities of color.

KEY TERMS

- drug courier profile – a tactic used by police in which officers actively use race as a determination of who to stop on the interstate for suspected drug trafficking.
- investigatory stop – stopping citizens in order to investigate crimes
- stop and frisk – stopping and patting down pedestrians, and/or pulling drivers over to investigate drug crimes
- pretextual stop – an investigatory stop where a traffic violation is used as a pretext for investigating further crimes.
- territoriality – is the social, cultural, economic, political, and other processes by which space is claimed by one particular group or entity and that claim is communicated to both insiders and outsiders.
- professional era - police agencies sought to establish territorial dominance through new technologies, such as the automobile. This era lasted from the 1930's to the 1980's.
- ideology of bureaucracy – where the chain of command – sergeants, lieutenants, and chiefs – suggested vigilant oversight and management.

- Militarization – began in the Progressive Era as reformers sought to create more-uniform public agencies. During this time, SWAT seeped into urban policing.
- Zoot Suit Riots – a series of conflicts emerging in Los Angeles in 1943 that resulted in several days of riots when over two hundred white sailors and police marched into East Los Angeles and began beating up Latin’s youths, stripping them of their clothes, and burning their Zoot suits.
- culture of policing – refers to how the organizational structure – as well as the behaviors, attitudes, and cultural mores – of policing influences the everyday actions of law enforcement officers and the community.
- broken windows policing - an iteration of order maintenance policing famously advocated by authors James Q. Wilson and George Kelling in 1982.
- order-maintenance policing - a framework where policing is focused on “disorder” and tasked with maintaining aesthetic order in the city.
- disorder – aspects of the built environment that make some people uncomfortable; can be youth hanging out, broken down cars, graffiti, dirty yards, etc.
- zero tolerance – is an iteration of policing that emphasizes swift punishment and repression in response to a first encounter.

CHAPTER SUMMARY

This chapter examines the practices of urban policing. Police are one of the most important agencies for how criminal justice institutions act to produce race.

This chapter tells the story of how the colonial imperative that founded the police, led to the structure, organization, and controversies in policing that we know today.

By marking and enacting boundaries, police are critical to defining space. Today that often means communicating to some that they are deserving of increased violence, surveillance, and suspicion. Police tactics like the investigatory stop, and race-based policing subject black and brown communities to disproportionate exposure to police violence.

Broken windows policing and the militarization of the police illustrate how race-based policing extends beyond the individual decision-making of the police officer to the entire system, culture, and training of police. The focus on the poor and communities of color is built into the very logic policing today and police act as a critical agency to furthering colonial power relations.

EXAM QUESTIONS

- *Short answer*
 - What is an investigatory stop and how does it contribute to the experience of racialized policing in the U.S.?
 - Define order maintenance policing and discuss the consequences of this type of policing for urban youth.
 - What is the reality of racial profiling and how does the history and culture of policing help to explain the persistence of tensions today?
 - What is the professional era of policing and how did it reform law enforcement?
 - How has the Supreme Court responded to raced based policing practices?
 - How has the culture of policing led to the hyperpolicing of communities of color?
 - What were the Zoot Suit riots and how did the police response demonstrate the tenets of the professional era reforms?
 - What is the evidence for raced based policing?
 - How does the experience of Ferguson, MO illustrate the issues with order maintenance and raced based policing?
 - What are the costs of racial profiling to the communities affected?
 - Why is the professional era of policing responsible for the considerable autonomy that police enjoy today?
- *Long answer*
 - Historical relations between police and urban communities of color have been further strained by the contemporary practices of policing, like order maintenance and broken windows policing. What are these types of policies and how have they been used to target urban areas? How do these types of policies view urban space and gangs and reflect police culture? How have these policies impacted urban life and residents? Why would some scholars argue that these policies recreate racial exclusions? In your opinion, should these policies persist or do they exacerbate existing racial inequalities?

IN CLASS EXERCISES

- *Exercise 1: Police “crackdowns”*
 - Have students read *The Benefits and Consequences of Police Crackdowns* at
 - http://www.popcenter.org/responses/police_crackdowns/
 - Consider:
 - How might the use of police crackdowns impact racialized policing in the U.S.?
 - Are police crackdowns good law enforcement practices for policing diverse urban communities?
- *Exercise 2: Finding “disorder”*

- o Begin:
 - Have students articulate what makes a “good” and a “bad” neighborhood
- o Have students navigate google earth for two-three neighborhoods that fit these two extremes (a good and a bad)
- o Have students identify how “good” and “bad” is written into the environment
- o Have students revisit the neighborhoods to consider next whether there are elements in “bad” neighborhoods that when viewed in a “good” neighborhood are not seen as disorderly
- o Have students consider larger question of whether policing disorder is good for urban communities
- *Exercise 3: Policing the police*
 - o Consider the following scenario:
 - Chief Happy of Fictionland has constituted you as a blue ribbon commission to advise him on the tension between police and communities of color. There are three proposals currently:
 - *Police for better policing* suggest that the police should change to an entirely “hot-spots” policing model that concentrates aggressive policing in neighborhoods that have the most incidents of crime and disorder.
 - *Citizens for Citizen Control* suggest that policing should be reorganized into neighborhood based districts and that citizen committees composed of neighborhood residents should oversee what police do and the behaviors they concentrate on. Any complaint against the police would be handled by the citizens committee.
 - *Radicals for a world without police* suggest that policing reinforces neighborhood exclusions and calls upon the police to disband. Money currently allocated for the police would be redistributed to communities to develop their own indigenous mechanisms of security and to provide for residential stability in the neighborhood.
 - In groups, discuss the pros and cons of each method and come to a conclusion as to the proposal that should be endorsed by the police.

DISCUSSION TOPICS

- *Definition of loitering:* "Gang loitering" means remaining in any one place under circumstances that would warrant a reasonable person to believe that the purpose or effect of that behavior is to enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal

activities. Does the definition of gang loitering adequately address the class and racial criticisms of gang laws? Is so, why? If not, why not?

- *DNA and policing*: In an effort to reduce crime, the California Association of Law Enforcement (CALE) proposes collecting the DNA of all arrested individuals and storing this information for future cases in a database. In the event that crime takes place, police can use this database to determine if known arrestee committed the infraction. Advocates argue that DNA is an invaluable tool in the arsenal against crime, and helps to reduce the risk of racial disparity based on individual bias. Opponents of the database disagree with CALE, and argue that this only works to further target people of color as criminal. Since people of color are disproportionately represented in arrest statistics, they argue that the DNA storehouse will continue to target the wrongdoing of people of color more often than that of whites. You are constituted as a congressional advisory council on the problem of racism in the criminal justice system. Should the state congress pass a law adopting a DNA storehouse? Why or why not?
- *Police accountability*: What should the relationship be between the police and the neighborhood community? Should the neighborhood have oversight over police (like a “citizen accountability board”? If so, what type of control should they have? If not, why not? Should the police be neighborhood based (instead of the city at large)?

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Chapter 8--The Colonial Order of the Court

LEARNING OUTCOMES

- Describe the role that courts played in advancing colonial conquest and illustrate how that continues through court practices today.
- Explain how courtrooms are organized in ways that reinforce social, economic, political, and racial inequalities.
- Analyze how racial inequality in court practice is systematically embedded in plea bargaining and court players
- Summarize how key court players are shaped by racial prejudice in ways that continue colonial and slavery era practices, such as the all-white jury.
- Analyze the role that courts play in the creation of urban racial and class geographies.

KEY TERMS

- fiction of objectivity – a fiction that “obscures that key players in the legal system have tended to share a conceptual scheme,” and “they are not seen to possess the norms and values that derive directly from their social location.”
- courtroom working group – the norms and values that unite, rather than divide, the court players – especially the judge, prosecutor, and defense attorney – despite their apparently adversarial positions.
- pretrial detention – when the defendant is held in detention pending trial, supposedly reserved for defendants who pose a greater threat of absconding
- plea bargain – A sentence that results from a negotiation between prosecution and defense; Often results in less penalty, reduced charges; Happens in the shadow of due process and outside the formal oversight of court procedures.
- prosecutorial upcharging – when a single incident generates a range of charges and often multiple counts.
- trial penalty - a strategy where prosecutors pursue the entire range of charges should defendants fail to accept a plea deal, thus subjecting the defendant to a potentially greater sentence.

- peremptory challenge – allows the attorney to excuse a potential jury member for any reason. Both prosecution and defense are given a set number of challenges and use these challenges to craft a jury pool they believe will be amenable to their argument.
- Batson challenge – contests the validity of peremptory dismissal of a jury member based on the belief that the real reason a juror has been struck is because of race or gender.
- stand-your-ground laws – the historical practice of killing nonwhites with impunity
- spatial governmentality – tactics that explicitly manipulate the spatial order of a community or region and attempt to manage the flow of people
- gang injunction – a court order similar to a restraining order in cases of domestic violence. It mandates that certain conditions be met by the person of people names in the order. Those named in the gang injunction are not eligible for public counsel, and the burden of evidence is considerably lower.

CHAPTER SUMMARY

This chapter examines how courts organize and produce race and coloniality in society today. While courts provide a mechanism for resisting state power, they also reproduce, bolster, and extend the power of the conqueror. The colonial legacy of the court manifests through the organization of what is known as the courtroom working group: the norms and values that unite, rather than divide, the court players—especially the judge, prosecutor, and defense attorney—despite their apparently adversarial positions. These practices all have their roots in European colonial expansion.

Courts exploit racial inequality. Black defendants are up to 18 percent more likely to be sentenced to prison than whites. White juries convict black defendants almost 16 percent more often than white defendants. The black population in the U.S. is only 13 percent but over 28 percent of those serving life sentences and 56 percent of those serving life without parole are black.

Courts are critical institutions organizing and producing race and coloniality in society today. *The court structure silences defendants and upholds the routinized and procedural aspects of the law, while ignoring the structural conditions under which the law operates.* Racialization continues today through the structure and practices of the court.

EXAM QUESTIONS

- *Short answer*
 - How did racial ideas shape the colonial construction of court practice?
 - What is the courtroom workgroup and why is it argued to undermine the adversarial nature of court practices?
 - How does race shape the geography of courtroom players?

- How does the fiction of objectivity become institutionalized through court practices?
- What is the plea bargain and why does it disadvantage poor defendants of color?
- How has the Supreme Court responded to the all-white jury and why does it continue even though it is no longer mandated in the law?
- What are the impacts of the all-white jury on the sentences of cases?
- How does whiteness influence a criminal court case?
- What is spatial governmentality and how is it reflected in gang injunctions?
- What are gang injunctions and why are they argued to be a mechanism of backdoor criminalization?
- How does race shape the role of the prosecutor?
- How do stand-your-ground laws institutionalize whiteness in the law?
- How does “reasonable racism” shape court practices, especially the jury?
- Why are poorer defendants more likely to plead guilty even when innocent?
- How does public defense ‘depend on inequality’?
- *Long essay*
 - Mass incarceration happened in an era where formal racial inequality is absent and today, the law formally mandates “colorblind” policies. How has the law exploited racial and class inequality and further disadvantaged communities of color?

IN CLASS EXERCISES

- *Exercise 1: The peremptory challenge*
 - Have students read *How the supreme court fixed a racial wrong*:
 - <https://www.cnn.com/2016/05/23/opinions/supreme-court-black-jurors-bright/index.html>
 - Individual reflection:
 - Does this solve the problem of racism in the courts?
 - Group activity:
 - Consider the findings in *Foster v. Chatman* (2015) and prepare a report on whether your group believes this solves the issues of racial injustice in the courts. If so, please articulate how it responds to the various racial injustices outlined in Chapter 8. If not, please provide a reason for why this ruling does not go far enough.
- *Exercise 2: City council and gang injunctions*
 - The city of Fiction has recently decided to take steps to pursue a gang injunction. Your group is a panel of expert witnesses hired by the city to evaluate it’s actions. Your project is to do the following actions: Prepare a position paper on the advisability of the gang injunction from the perspective of your character (turned in next Wednesday) Elect a speaker who will deliver your position at the next city council meeting (next Wednesday). Elect a city council representative from your group who will listen to the positions of all the groups and sit on a council that will

deliver the final decision on whether or not to go forward with the injunction. Prepare a list of questions for other witnesses for your city council member to ask.

- On a separate day, have students turn in position papers. Constitute the city council, have characters present on their position, have council ask question and have council vote on advisability of gang injunction.
- Characters:
 - Member of prosecutor's office: Marcie; Attorney general elected position and prosecutor ran on being tough on crime; Gang injunctions provide a way for prosecutor's office to intervene—since not traditional law enforcement, is forced to use the courts; often in criminal investigations not enough evidence to secure conviction; Seen people continuously get away with intimidation and illegal activity, but can do little about it; Hears from community leaders about need to address gangs in the neighborhood and wants to respond
 - Community activist: James; Teacher at local school and has heard from a number of kids about negative experiences with police; Knows that schools do little to help the problem; he has maxed out his credit cards buying supplies for the classroom, including pencils, paper, books, and other necessary supplies; Frustrated because schools do little to prepare students for legal employment and then criminalize them for not having any choice; Believes that people should have freedom of association, and that targeting "gangs" will lead to a lot of unnecessary people being put in jail; Also does nothing to prevent crime and creates a pipeline into the criminal justice system; Wants the money that would be spent on gangs to be distributed to make the lives of low income residents of the neighborhood better. Says "If I had the \$400 million allocated to the police budget, I could decrease violence much more effectively than police practices."
 - Self-proclaimed member of North Side and targeted by gang injunction: Phil; Grew up in neighborhood, and managed not to join gangs during his youth; Gets picked up for assault after he got into a bar fight and is sentenced to prison; Once in prison, told that he need to choose sides, so joins the North Side gang; Now he is out of prison and trying to get his life back together; He doesn't have enough money to pay first and last months rent on a place, and the only people he knows to stay with are his mom and sister, but the injunction covers the area they live in and if he disses his friends who also live in the neighborhood, his family will be in danger
 - Longtime resident of neighborhood: Debbie; Grew up in neighborhood; One kid killed in gang shootout; Police tried to coerce younger son into being an informant on his friends (who the police suspected were in gangs), and when the son refused, police began harassing son to the point where they eventually picked him up on a marijuana possession; Wants something to be done about violence in neighborhood but is wary of any attempts to further criminalize youth; Recognizes that gangs often have detrimental effects on

community residents, but also sees the effects of policing and government policies to be more detrimental to residents and youth

- Late twenties, new to area, recent homeowner: Mark--: Just moved to area; Only place could afford to buy a place was in Neighborhood; Wants to start a family; Likes neighborhood, likes neighbors, but is afraid it is an unsafe place to raise a family; Drug dealers hang out on stoop in front of building; often hears shots and sirens at night; Is interested in having more policing and more incarceration to stem the violence in the Neighborhood area
- Police officer: Linda; Been a cop for over ten years; Seen different gang laws come and go, usually with very little positive effect on crime; Seen residents too intimidated by gang members to report criminal activity or cooperate police, and wants to make these people safer; Seen many gang members go to prison, only to be back out in the community doing exactly the types of crime they did before, and legal constraints hinder police from intervening; Wants gang injunction because it will provide a tool to further investigate gang members without the protections given to criminal defendants
- Neighborhood resident MARGARET: Grew up in neighborhood; Without a father in the house, she says the community raised her and her brothers, and that's how a lot of people feel about this tight-knit set of blocks at the farthest northern end of Oakland.; Has North Side tattoo "to show neighborhood solidarity"—but is not member of any gang; tattoo (and neighborhood specific clothing would subject her to banishment if she was ever stopped by police. She is afraid that injunctions would hinder neighborhood solidarity and community building
- Ex North Side Member Yancie ; Joined gang in early teens for "thrills and community". Now 21 he is on the injunction list. He is afraid that injunction would make it difficult to continue his job as carpenters apprentice since spray paint and many tools in his toolbelt are on "banned items" list. Because of this, he would instantly violate injunction if he left his house with his tool belt; lives within the proposed injunction zone, in a home he inherited from his recently deceased father, he said, and cares for his younger brother who uses a wheelchair.; Says "the chief got it screwed ... Out here it's a whole different ballgame. It's not ...so much problems with the gang, it's just certain individuals can't get jobs, don't have opportunity, lack education. So they go out and commit crimes to survive.
- Fernando Rodriguez owns a Cafe in the neighborhood; is heartened by the recent gentrification of the neighborhood he says more people are out shopping and walking the streets than in the past business has improved however more recently people are staying in reports of crime in neighborhood have hurt business; recently someone walking by hit one of his patrons and stole his laptop from a sidewalk patio. He is afraid that increased gang activity in the area is hurting business and putting his customers and neighbors at risk of physical harm; He sees gang injunctions as

a way for merchants and residents to “take back their neighborhood” from thugs and criminals.

DISCUSSION TOPICS

- *Self-defense and reasonable racism:* It is a stormy night in a combined residential and commercial neighborhood in a predominantly white upper-middle-class section of a major city. The time is 10:30 p.m. A middle-aged resident of the neighborhood enters the bank's lobby to use the ATM, inserts her bank card into the machine, and requests \$200. As she waits for her transaction to be processed, the woman suddenly notices a figure moving directly toward the lobby from across the street. Focusing her full attention on the approaching figure, she notes that the person is a young man (at most twenty-something); that he is wearing a trench coat with an upturned collar and a tarpaulin hat pulled down even with his eyes (perhaps in deference to the pouring rain); and that he is black. The trench coat-clad young man glances down the deserted street as he reaches the lobby and then enters, pushing his right shoulder against one of the swinging glass doors. As he pushes the door open, he unbuttons the collar of his trench coat with his right hand and reaches into the coat in the direction of his left armpit. With his eyes focused on the space beneath his coat into which he is reaching, he takes hold of something and begins to withdraw it. Panic-stricken at the image before her and conscious of the rhythmic clicking of the automatic teller counting out ten fresh clean twenty-dollar bills, the woman pulls a pistol from her purse and levels it at the entering figure. As the young man looks up from his coat, he sees the pistol trained on him and reflexively thrusts his right hand - which now contains a billfold retrieved from his inside breast pocket - out in front of him while shouting at the woman not to shoot. Perceiving what she takes for a handgun thrust in her direction, together with the man's loud shouts, the woman shoots and kills the black man. Imagine you are the prosecutor in this case. Should charges be brought against the woman or is this a case of the reasonable use of self-defense? How might the legal system see it?
- *The war on drugs and jury nullification:* A prominent legal scholar, Paul Butler, has argued that the black community is predominantly hurt by drug laws and that black jurors should use nullification in prosecutions of nonviolent crimes like drug possession. He writes that “for pragmatic and political reasons, the black community is better off when some nonviolent lawbreakers remain in the community rather than go to prisons. . . . Considering the costs of law enforcement to the black community and the failure of white lawmakers to devise significant nonincarcerative responses to black antisocial conduct, it is the moral responsibility of black jurors to emancipate some guilty black outlaws” (Butler 1995, 678). Should jury nullification be used in the case of drugs or nonviolent crimes? Why or why not?
- *Abolishing peremptory challenge?:* To address the issues of peremptory challenge, two different solutions have been proffered by legal scholars: abolishing peremptory

challenges entirely or forcing both sides to agree on a challenge of a juror. Abolishing peremptory challenges entirely would result in only for-cause challenges and jurors being released for reasons such as economic hardship, personal experience with similar cases, or other clear reasons for bias in the jury pool. Caren Myers Morrison (2014) writes that another alternative—forcing both sides to consent to a challenge—would provide the best solution. Both sides would have the opportunity to limit bias, while also providing for the legitimacy of verdicts and enhanced community participation. Given these two suggestions, what do you think should be done about peremptory challenges? Should they be abolished, reformed so both sides have to consent, or retained in their current configuration?

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Chapter 9: Imprisoning Race: From Slavery to the Prison

LEARNING OUTCOMES

- Explain how the prison is an institution of coloniality.
- Summarize why and how people argue that the prison replicates systems of racialized capitalist expropriation, such as slavery.
- Survey the history of prison, why it developed, and how it contributed to a social construction of whiteness.
- Describe how and why the prison transformed into the racial management institution it is today.
- Compare philosophies of punishment and the new penology with racial dehumanization logics.
- Give examples of the impact of imprisonment on individuals after they've served their time.

KEY TERMS

- Dehumanization – a process that excludes human beings from the category of human and relegates them to a social subhuman or nonhuman
- life course – a sociological term that “views the passage to adulthood as a sequence of well-ordered stages that affect life trajectories long after the early transitions are completed”
- prison industrial complex – a term that encompasses not just the business of imprisonment but also the vast number of private companies supplying goods and services to prisons.
- Private prisons--
- Deterrence – a philosophy that presumes that people commit crime when they are not prevented from doing so by fear of sanctions.
- convict leasing – Prior to the Civil War, convicted free blacks were sentenced to forced labor

- chain gang – a group of men working a field in black and white striped jumpsuits, chained at the ankle, with men on horses overseeing.
- Rehabilitation – premised on the idea that someone who commits crime is damaged in some way and can be repaired, reformed, or rehabilitated.
- trusty system – was a method of controlling inmates using the inmates themselves. Through this system, staff designated particular individuals – always white – to control and discipline others.
- indeterminate sentencing – an open-ended sentence, such as a sentence of “from one day to life” or for a range of one to ten years.
- Punitive – refers to the desire to increase the severity of prison sentences, including the death penalty
- Warehousing – refers to the way that people in prison are often merely housed, with little purpose to their incarceration, and often in ways that are hardly different from the warehousing of consumer goods.
- Incapacitation – is the ultimate dehumanizing tactic of punishment, because it considers that people who commit crime need to be completely removed from society.
- determinate sentences - prescribe a fixed amount of time
- new penology – a new theory that holds punishment is not about the individual convicted of crime but about maintaining control and eliminating risk.
- civil death – the idea comes from medieval Europe, where one who committed a crime was stripped of citizenship and the rights and protections that went along with it. Those who experienced civil death could be killed with impunity.
- felon disenfranchisement – is the denial of political rights, including voting, to those convicted of felonies

CHAPTER SUMMARY

Prisons are one of the most important institutions organizing the racial experience today. This chapter explores why the prison is considered the modern successor to slavery and other institutions of racial management. We seek to develop a historicized understanding of how prisons came to play such an integral role today in the remaking of race and racialized experience. This experience, we argue, is produced through the multiple dehumanizing effects of the prison, from actual incarceration to the lasting stigma of a felony conviction to the collateral consequences on affected communities, families, and loved ones.

In many ways, prisons serve the same social and economic functions of slavery, racial subjugation and wealth accumulation. From a macroeconomic perspective, the prison represents how the survival of some means the subjugation of others. Over 60 percent of those imprisoned are black or brown, while the prison workforce contributes 6 percent of the GDP of the U.S. Sixty percent of young black men without a high school education had gone to prison by 1999. This rate of incarceration has far-ranging effects not just on those incarcerated but on the families, children, and entire neighborhoods

While slavery, Jim Crow, and residential racial segregation were all mechanisms through which the state created racial inequality, racially subjugated black communities, and subjected them to violence and increased death, today imprisonment systematically results in these very same outcomes. Even further, slavery continues and is legally and constitutionally sanctioned in prisons by the

Thirteenth Amendment. Today, prisoners are considered to have no employment protections and to be constitutionally enslaved.

The disproportionate incarceration of black and Latino men also results in a concentration of wealth for a primarily white elite corporate class. Corporations such as Nike, Starbucks and Microsoft all profit from prisons.

Prisons also resemble slavery in other ways. Prisons lead to economic development in rural white communities. During slavery, lower-status whites were often the direct supervisors, guards, and enforcers on plantations and were even the majority of those who served in slave patrols. Today, prisons mirror these power relations. While the majority of those imprisoned are people of color, the prison workforce is 70 percent white. Prisons, then, are microcosms of colonial power relations, with the white rural working class responsible for the overseeing of prisoners.

EXAM QUESTIONS

- *Short answer*
 - What is civil death and how is it demonstrated by the impact of imprisonment on communities of color?
 - What has been the impact of felon disenfranchisement on communities of color?
 - What is dehumanization and why does the contemporary prison system demonstrate it?
 - How does incarceration impact the life course?
 - What is the prison industrial complex and how do both states and private companies contribute?
 - What was the origin of the prison and why was it considered an enlightened—and white—form of punishment?
 - How does deterrence, retribution and the new penology contribute to the dehumanizing aspects of imprisonment?
 - What has been the impact of imprisonment on people who have served their time?
 - What is convict leasing and how did it reconstitute slavery?
 - What is the chain gang and why was it seen as an improvement over convict leasing?

- What has been the history of racial segregation in prisons?
- How do urban and rural geographies influence the practice of imprisonment?
- Why is mass incarceration regarded as the newest racial governance strategy in the U.S.?
- *Long essay*
 - Mass incarceration is regarded as the newest peculiar institution. Describe how punishment has been used historically and today as a racial project, and the role of the prison in this process. In your answer, be sure to address the describe the functional similarities between slavery and mass incarceration, historical types of imprisonment, the role of imprisonment today, and the geography of incarceration.

IN CLASS EXERCISES

- *Exercise 1: Race and rethinking the prison*
 - Governor X has constituted your group as an “expert commission” to advise on race and crime in the system. Governor has asked you to devise a plan for the criminal justice system at large. The primary question is should [insert your state] continue to spend [insert cost of imprisonment in your state] on prison construction or should it use its money to develop “community-based” alternatives? To answer this question, you are to come up with a plan for [your state’s] criminal justice system. If you advise [your state] to continue with the prison expansion plans already being developed, you must create a sound argument for why this is the best direction and address how [your state] can ensure that all people enjoy the same rights and protections. If you advise [your state] to scrap prison construction, you must develop a sound argument for why and address what types of programs would replace prison construction in [your state].
- *Exercise 2: Felon disenfranchisement*
 - A recent study found that states with the highest rates of racially disproportionate incarceration also had the highest rates and strictest laws on felon disenfranchisement. Felons for the right to vote have filed a lawsuit alleging that this disparity violates the 14th Amendment right of equal protection. They argue that the unequal enforcement of enfranchised laws across states constitutes a constitutional violation of equal protection. Citizens for State’s rights argues that the federal constitution protects state’s interests in creating laws that reflect the unique views of their constituencies, and that state laws on felon disenfranchisement should be protected by the doctrine of state’s rights. In groups, imagine you are the Supreme Court and have been asked to deliver an opinion on this matter. In your opinion answer the following question: Does the variance in felon disenfranchisement laws across states reflect a violation of equal protection? Your reasoned opinion is due at the end of class.

DISCUSSION TOPICS

- *Remedying racialized incarceration:* Canada recently recognized a problem with racially disproportionate incarceration among its First Nation's peoples. To remedy this disproportionality, Canada passed a law requiring judges to assess the individual and community impacts of incarceration when sentencing a First Nation's person for a criminal offense. This law requires that judges take into account the impact that incarceration will likely have on the future law-abiding potential of the individual and the overall impact of incarceration on the community. If the judge determines that incarceration is likely to result in a net harm, they are instructed to consider alternatives to incarceration, including probation, time-served, and release from the criminal justice system altogether. Given the impact of mass incarceration at the neighborhood scale, should the U.S. consider adopting a similar measure? Explain your answer thoroughly.
- *Voting and felon disenfranchisement:* After the Bush-Gore election, 600,000 Florida citizens filed a class action lawsuit challenging Florida's permanent disenfranchisement laws. Lawyers for the plaintiffs argued that the ban violated the equal protection clause of the 14th Amendment, the right to vote guaranteed by the 15th Amendment, and the Voting Rights Act of 1965. In particular, they noted that a majority of disenfranchised voters in Florida were African American. Florida State lawyers argued that the statute is narrowly tailored to only prohibit voting if convicted of a felony and that this narrow tailoring was not adopted with the intent to racially discriminate. In your opinion, does the disenfranchisement of felons and its racially disparate impacts constitute a violation of equal protection?

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Chapter 10--“Race to Execution”: Lynching, Mass Incarceration, and the Resurgence of the Death Penalty

LEARNING OUTCOMES

- Explain the racialized application of the death penalty.
- Summarize how the death penalty continues the practices of racial oppression associated with lynching and colonial era slavery-relations.
- Illustrate how racial disparities are produced through geography and race.
- Describe the roles that key court actors play in facilitating racial disproportionalities in the use of the death penalty.

KEY TERMS

- aggravating factors – factors that increase the severity of a crime
- mitigating factors – factors that lessen the severity of a crime
- lynching – in the South, the real engine of racial terror as extrajudicial killing, sanctioned by state officials
- death-qualified jury – is one that is selected from a pool of people who satisfy two conditions: they are not categorically opposed to the death penalty, and they are not in favor of mandatory death penalty for instances of capital murder.
- wrongful convictions – the conviction of a person for a crime they did not commit
- Fourteenth Amendment – passed shortly after the end of slavery and guarantees citizens that “no State shall... deny to any person within its jurisdiction the equal protection of the laws.”
- McCleskey v. Kemp – a case contesting the constitutionality of the death penalty on the basis of race.
- Baldus study – a study tested 230 variable in the administration of the death penalty in Georgia, including age, level of education, prior offenses, facts of the case, and importantly, race.

CHAPTER SUMMARY

This chapter examines race and the death penalty. The reinstitution of the death penalty has been on a steady upward climb alongside the advent of mass incarceration. The connection between colonialism and elimination of the racial other through the death penalty is obvious. Over 76% of cases that result in the death penalty are homicides against white victims. The most likely cases to lead to the death penalty are ones where the defendant is black and the victim is white—this happens despite the reality that black-on-white homicide is the least likely homicide pairing and African Americans are 50 percent of all homicide victims.

While overall the usage of the death penalty has declined over time in the United States, the proportion of black people executed has increased. This suggests that even though the use of the death penalty has declined overall, our vision of who deserves death remains heavily racialized. Suburban counties are often more likely to have white residents who report higher fear of crime, while also being more punitive and supportive of the death penalty. This translates into a judicial system where these counties send more people to death row and perpetuate the narrative that “some places” are more violent, and thus necessitating death, than others.

Today they show the extensive ways that race shapes the administration of the death penalty, from political arguments for its utilization to the geography of application. The death penalty is a primary tool through which to glimpse how the racial state continues.

EXAM QUESTIONS

- *Short answer*
 - How does racial bias present in the death penalty in the U.S., both historically and today?
 - How has racial bias influenced the administration of the juvenile death penalty?
 - What are the parallels between lynching historically and the death penalty today?
 - How was the death penalty justified historically because of the practice of lynching?
 - What was the eugenic argument for the death penalty?
 - How do historical ideas of human/nonhuman impact the administration of the death penalty today?
 - What is the geography of death?
 - How is the racial other produced through geographical discourse around the death penalty?
 - How does race influence juror deliberation in the death penalty?
 - How does race influence aggravating and mitigating factors in the death penalty?
 - What are the constraints on public defense for arguing a capital case and why are public defenders so influential on who gets the death penalty?
 - How does the death penalty demonstrate coloniality?

- How does whiteness pervade prosecutorial decisions?
- What is the death qualified jury and how does it institutionalize the all-white jury?
- How has the Supreme Court responded to charges that the death penalty is racially biased?
- *Long answer*
 - What are the historical corollaries between lynching and the death penalty? Why did the death penalty surge in usage historically when it had almost been abolished throughout the country? Why is the death penalty as it's administered today seen as the continuation of "legal lynching"?
 - Describe the Supreme Court jurisprudence on race and the death penalty. Does the distinction between disparity and discrimination adequately protect communities of color?

IN CLASS EXERCISE

- *Exercise 1: Creating a death qualified jury*
 - Have students complete a juror survey to qualify a capital jury, such as the one available here:
 - http://www.juryinstructions.ca8.uscourts.gov/quest_juror.pdf
 - Once students have filled out the form, have them get into groups and answer the following questions:
 - Who do you think amongst the group would be disqualified from serving on a capital jury?
 - If you were a prosecutor seeking the death penalty, which students would you select?
 - If you were a defense attorney trying to prevent the death penalty, which students would you select?
 - How does the juror questionnaire institutionalizing whiteness as a component of the capital jury?

DISCUSSION TOPICS

- *Disparity versus Discrimination:* The legal decision in *McCleskey v. Kemp* established the legal distinction between disparity and discrimination in Supreme Court jurisprudence. Attempts to use social scientific analysis of race in the criminal justice system have largely failed due to this distinction. Consider: is the legal distinction between disparity and discrimination sufficient protection against racism in the criminal justice system?

- *Race and the death penalty*: Analysis of California's death penalty shows that the 'race of the victim' influences who gets the death penalty. Despite the fact that they are the least likely to be victimized, cases with white victims are the most likely to have the death penalty pursued. Should the disparity with regards to the 'race of the victim' constitute discrimination in death penalty cases? Should this disparity render the death penalty unconstitutional: In particular cases? Overall? Not at all? How would you have decided the *McClesky v. Kemp* case?

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Chapter 11--Conclusion: Futures of Race and Crime?

CHAPTER SUMMARY

In this book we have explored how ideas of race born out of colonialism shape the institutions and practices of the criminal justice system today. Ideas of crime have consolidated structures of racial hierarchy and re-created race as a meaningful category even though legal racial apartheid structures are a thing of the past. This continuous process of racial subordination is the result of the power of coloniality and how logics and practices of humanization/dehumanization work to shape ideas, practices, and institutions.

We have demonstrated how juvenile courts and police patrol emerged not from an increase in crime or delinquents but from the practices of racial scientists. We have also shown that despite the demise of formal racial structures more than fifty years ago, criminal justice institutions continue to exert considerable influence on wealth accumulation, college attendance, and life outcomes.

Racial pathologization and hierarchies are further reinforced in contemporary systems of punishment that are structurally reminiscent of chattel slavery. As the criminal justice shows, color is only a proxy for an entire systematic process of humanization and dehumanization, a process that results in what we identify today as race. Although recent develops suggest that we may see the lessening importance of prison as an institutional structure, they also suggest that the logics of coloniality will continue through the development of new institutional structures and practices.

IN CLASS EXERCISE

- *Exercise 1: Is American law inherently racist?*
 - Begin by asking class to generate all the ways that race impacts the criminal justice system. Have the class read Delgado and Farber “Is American law inherently racist?” Prompt students with:
 - Using the class generated brainstorm on how race impacts the criminal justice system as a backdrop, consider the question that Delgado and Farber were asked to debate: Is American law inherently racist?
 - Ask students:
 - How would you answer this question? If you answer no, explain why not. Also explain why the various injustices listed by the class, Delgado and Farber don’t hinder the realization of a just system of law.
 - If yes, explain why. What might this portend for the future of the criminal justice system? What might a system of law that isn’t inherently racist look like?

- Setup students in a traditional debate exercise, with a group to argue it is, and a group to argue that it isn't. Have a panel of students moderate the debate and the rest of the class vote on the outcome.