

**Exploring the Phenomenon of Disproportionate Representation of Black Men Within the Framework of the United States Criminal Justice System**

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*Abstract*

The disproportionate representation of Black men in the United States criminal justice system is a product of systemic racism deeply rooted in the nation's history, dating back to slavery and its enduring legacies. This paper examines how discriminatory policing policies, legal consciousness, and the cultural dimensions of law intersect to reinforce structural inequalities. Through a comprehensive literature review and statistical analysis, it explores how Black men navigate and perceive their rights within a legal system that continues to marginalize them. Historical policies such as Jim Crow laws, redlining, and mass incarceration have perpetuated cycles of economic and social disenfranchisement, contributing to over-policing and harsher sentencing for Black individuals. Furthermore, the normalization of racism within legal and political frameworks has fostered an environment where justice remains elusive for those historically oppressed. By synthesizing scholarly research, legal theories, and empirical data, this analysis highlights the urgent need for systemic reform to dismantle discriminatory structures and ensure equitable treatment within the legal system.

Slavery in the United States of America began in August 1619 and persisted until the ratification of the 13th Amendment in December 1865. However, the end of slavery did not signify the end of systemic oppression for African Americans. Sharecropping emerged as a means to keep them tied to the land they once worked as slaves, perpetuating economic disenfranchisement and limiting opportunities for advancement. This transition laid the groundwork for discriminatory practices, such as segregated schooling and Jim Crow laws, embedding racism into American society and its legal institutions. The legacy of institutionalized racism persists in the modern legal system, shaping its biases and perpetuating injustices against Black individuals, particularly Black men. Despite purported principles of equality, the legal system remains tainted by its violent past, rendering true fairness elusive for those historically marginalized. Consequently, Black men find themselves disproportionately represented within the U.S. criminal justice system, a reality rooted in centuries of aforementioned systemic racism.

Throughout this analysis, I argue that Black men are disproportionately represented in the U.S. criminal system due to systemic racism rooted in slavery, discriminatory policing policies that specifically target Black communities, and broader political and social failures that continue to marginalize them. In support of this argument, my literature review will cover legal consciousness and explore how Black men navigate and perceive their rights within the United State's legal framework. Subsequently, I will examine the cultural dimensions of the law and their intersection with Black men's interpretations, shaping their experiences within the legal sphere. Building upon this foundation, I will employ statistical analysis, review relevant literature, and synthesize findings to reinforce the overarching argument. I will conclude by emphasizing the urgent need for systemic reform to address entrenched inequalities and mitigate the overrepresentation of Black men within the U.S. criminal justice system.

### Literature Review

One of the two key elements under scrutiny here is legal consciousness which encompasses the awareness of rights and the perception of unequal access. According to NAACP<sup>1</sup>, one out of three Black boys born today can expect to be sentenced to prison. The persistent surveillance of Black neighborhoods exposes young Black men to the legal system and the concept of rights from an early age. Consequently, Black men who navigate the judicial system often acquire a level of legal proficiency that far exceeds what is typical

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<sup>1</sup>"Criminal Justice Fact Sheet," NAACP, 2022, <https://naacp.org/resources/criminal-justice-fact-sheet>.

among the general population. This is not because of formal training but due to their disproportionately frequent encounters with the law in their daily lives or periods of incarceration. These ongoing interactions with the legal system profoundly influence individuals' perceptions of both the law and themselves, shaping their responses to and interactions within the system. This dynamic relationship between experience with the law and self-perception forms a continuous cycle, ultimately impacting individuals' beliefs about their entitlements and influencing their behaviors in everyday life. Sally Merry<sup>2</sup> in "Localizing Human Rights and Rights Consciousness" and Kira Tait and Whitney K. Taylor<sup>3</sup> in "The Possibility of Rights Claims-Making in Court: Looking Back on Twenty-Five Years of Social Rights Constitutionalism in South Africa" discuss legal consciousness in depth. Merry claims, "Vulnerable individuals' willingness to adopt a rights framework depends in part on the way institutions respond to their rights claim" (215). This means if people are brushed off and treated as unimportant, they're less likely to take a rights approach to their problems; People will not recognize nor seize their rights if the state has not delivered on said rights in the past (217). Tait and Taylor second this thought process by stating in their paper that the legitimacy of social rights constitutionalism is beholden to people's perception that the state will deliver. Individuals' beliefs and demands for justice are connected to their personal circumstances, sentiments as rights holders, and trust in legal institutions (1).

Now for the other pivotal aspect: the culture of law. As previously mentioned, this racist cultural fabric is deeply interwoven with the historical narrative of the United States. Despite the abolition of slavery, the legal system ensured its continuation within its structure. This modern manifestation of slavery is starkly evident within U.S. prisons, where Black male inmates are compelled to labor for minimal to no compensation. What is particularly egregious is the practice of forcing these individuals to work on former plantations,<sup>4</sup> echoing the historical exploitation of enslaved individuals on the same land. This is not merely an oversight on the part of the U.S., rather, it represents a deliberate choice to demean Black men and remind them of their fraught history in a nation supposedly founded on principles of freedom. This insidious legacy permeates society to such an extent that "freedom of speech" is invoked to justify the dissemination of hateful rhetoric toward people of color, particularly Black men. Racism has become so deeply entrenched in societal norms that it is normalized and even afforded protection, despite its demonstrable harm to others. In essence, the rights of certain individuals are safeguarded at the emotional and societal expense of others.

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<sup>2</sup> Sally Engle Merry, "Localizing Human Rights and Rights Consciousness," in *Human Rights and Gender Violence: Translating International Law into Local Justice*, 2006.

<sup>3</sup> Kira Tait and Whitney K. Taylor, "The Possibility of Rights Claim-Making in Court: Looking Back on Twenty-Five Years of Social Rights Constitutionalism in South Africa," *Law & Social Inquiry*, 2022.

<sup>4</sup> Lucía X. Chen, "Rooted in Racism: The Unjust Incarceration and Exploitation of People in Prison Through Forced Labor," Economic Policy Institute, February 28, 2024, <https://www.epi.org/publication/rooted-racism-prison-labor/>.

According to Mindie Lazarus-Black<sup>5</sup> in “The Rites of Domination: Practice, Process, and Structure in Lower Courts,” the culture of the law creates an illusion of protecting common interests while providing limited benefits (2). Courts enforce and reflect social order through bureaucratic and legal-rational domination, as evidenced by the 12 rites of domination. The rites demonstrate how courts administer justice while simultaneously maintaining social order, often at the expense of the marginalized or less powerful. Stephanos Bibas<sup>6</sup> in “Improve, Dynamite, or Dissolve the Criminal Regulatory State” echoes Lazarus-Black’s points. Both state that criminal justice professionals often prioritize enforcement without considering the costs of over-punishment, leading to disproportionate impacts on minority communities and undermining the system’s legitimacy (2). The judicial system has underfunded legal defense which is often utilized by marginalized, poorer communities who are typically seen more frequently in the legal system due to the disproportionate enforcement of low-level offenses (6).

Finally, Rachel Barkow<sup>7</sup>’s “The Criminal Regulatory State” ties the previous two articles together. The influence of legal culture is evident, particularly in politics, where policymakers reacted to public concerns by enacting fresh criminal legislation, deepening the marginalization experienced by people of color (7). Two waves of mass incarceration, notably in the 1970s and 1990s, disproportionately impacted people of color, Black men in particular. The growth of jail populations in the last two decades alone has largely been driven by pretrial detention. Despite decreasing crime rates during the second wave, incarceration rates continued to soar with harsher sentences imposed for minor offenses. High cash bail frequently resulted in extended stays in local jails before conviction. Upon release from prison, individuals often found themselves under state supervision through parole for years, living under the constant threat of re-imprisonment for minor infractions (Wellser<sup>8</sup>, Prison Policy Initiative<sup>9</sup>). The inadequacy of oversight and review within the criminal justice system permits unrestrained growth and expansion, necessitating reform.

### Statistics

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<sup>5</sup> M. Lazarus-Black, “The Rites of Domination: Practice, Process, and Structure in Lower Courts,” *American Ethnologist* 24, no. 3 (1997): 628–51.

<sup>6</sup> Stephanos Bibas, “Improve, Dynamite, or Dissolve the Criminal Regulatory State?” in *The New Criminal Justice Thinking*, 2017, 61–70.

<sup>7</sup> Rachel Barkow, “The Criminal Regulatory State,” in *The New Criminal Justice Thinking*, 2017, 33–52.

<sup>8</sup> Mike Wessler, “Updated Charts Provide Insights on Racial Disparities, Correctional Control, Jail Suicides, and More,” *Prison Policy Initiative*, 2022, [https://www.prisonpolicy.org/blog/2022/05/19/updated\\_charts/](https://www.prisonpolicy.org/blog/2022/05/19/updated_charts/).

<sup>9</sup> “Race and Ethnicity,” *Prison Policy Initiative*, [https://www.prisonpolicy.org/research/race\\_and\\_ethnicity/](https://www.prisonpolicy.org/research/race_and_ethnicity/).

Black individuals constitute the majority of police stops and arrests in Philadelphia, comprising 69% and 62%, while White individuals represent only 18% of stops and 21% of arrests (DAO <sup>10</sup>Racial Injustice Report, 2023). Despite making up only 13% of the U.S. population, Black people account for 22% of fatal police shootings (NAACP). A study in *Nature Human Behavior*<sup>11</sup> found that Black drivers were less likely to be stopped after sunset, indicating potential bias in stop decisions as the color of the driver's skin was harder to discern at night. Furthermore, Black individuals are incarcerated at over five times the rate of Whites, with 35% of those executed under the death penalty in the last 40 years being Black (NAACP). Approximately 47% of the 1900 exonerations since October 2016 were African American (NAACP). Homicides of Black victims are less likely to be solved, with a 5% lower clearance rate compared to Whites (Prison Policy Initiative). In Manhattan, courts convicted Black individuals of felonies and misdemeanors at a rate 21 times higher than that of White individuals over the past two decades (NYCLU<sup>12</sup>).

The issue of racial injustice within the American prison system, as discussed in Roosevelt<sup>13</sup> Noble's "Black Rage in the American Prison System," sheds light on the systemic discrimination and socio-economic factors that perpetuate violence and unequal treatment (Noble 15-16). Noble argues that being Black in urban America is inherently tied to experiences of violence and relative deprivation. This historical context rooted in slavery, Jim Crow laws, and lynching has deeply ingrained a sense of rage and powerlessness among Black males, as they navigate a system that is perceived to be set up against them (45-49). This sentiment is echoed in Matthew Clair's<sup>14</sup> "Different Paths to the Same Courts," where structural inequalities in education, policing, and access to resources contribute to divergent paths within the criminal justice system. While privileged individuals receive leniency and second chances, disadvantaged individuals face constant surveillance and racism, influencing their trust in the legal system (Clair, 33). Different people justify illegal actions either as pleasure or rebellion (White) or as a response to economic or racial oppression (Black), influencing their perception and future choices. Privileged individuals engage in crime because they can, while disadvantaged individuals feel they have no choice. These articles intersect in highlighting the enduring impact of historical oppression and the contemporary manifestations of racism that continue to shape the experiences and perceptions of Black individuals within the criminal justice system today.

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<sup>10</sup> *DAO Racial Injustice Report*, 2023, <https://phillyda.org/wp-content/uploads/2023/06/RACIAL-INJUSTICE-REPORT-2023.pdf>.

<sup>11</sup> Emma Pierson et al., "Nature Human Behavior," *Nature*, 2020, <https://www.nature.com/articles/s41562-020-0858-1.pdf>.

<sup>12</sup> "A Racial Disparity across New York That Is Truly Jarring," NYCLU, 2024, <https://www.nyclu.org/commentary/racial-disparity-across-new-york-truly-jarring>.

<sup>13</sup> Roosevelt Noble, *Black Rage in the American Prison System* (New York: LFB Scholarly Pub., 2006).

<sup>14</sup> Matthew Clair, "Different Paths to the Same Courts," in *Privilege and Punishment: How Race and Class Matter in Criminal Court* (Princeton: Princeton University Press, 2020).

### Analysis

The central point of this discourse is that many institutions in the U.S., particularly the judicial system, are built upon a foundation of racism. Racism has long pervaded American society, especially when slavery was commonplace. It was during this period that the seeds of generational trauma were sown for countless Black families across the nation (Noble 46). The aftermath of slavery posed immense challenges for Black families. Freed slaves often found themselves compelled to work for meager wages, if any at all, as employment opportunities were scarce. Many remained trapped in exploitative arrangements, such as sharecropping, unable to amass enough wealth to break free from the cycle of poverty (PBS<sup>15</sup>). This was when the wealth gap emerged; Whites were able to accumulate generational wealth while Blacks were not. Despite the Civil War being fought over the issue of slavery, there persists a denial of this historical reality, with a portion of the South still proudly waving the Confederate flag—a symbol synonymous with the belief that Blacks are inherently inferior to Whites (and a symbol representing the KKK). While some may argue that such symbols are a mere reflection of history, it begs the question: why perpetuate a legacy rooted in the abhorrent practice of human ownership?

The answer lies in the enduring dehumanization of Black individuals, perpetuating the notion that they are undeserving of freedom and equal opportunities. This sentiment is further echoed in the realm of anthropology, which historically sought to justify racial hierarchies by falsely claiming genetic superiority among Whites (“scientific racism,” Harvard Law<sup>16</sup>). Such ideologies serve as a pretext for the subjugation of marginalized communities, fostering a culture of inferiority. The system, by leveraging its history of disenfranchisement, effectively stifles calls for revolution and reform, instilling a sense of hopelessness in the oppressed and thwarting aspirations for a brighter future. This cycle of inequality is perpetuated and reinforced by various policies and practices. The origins of our modern-day police mentality can be traced back to “Slave Patrol” which established a system of terror in response to slave uprisings with the capacity to pursue, apprehend, and return runaway slaves to their owners, including the use of excessive force (NAACP). As mentioned previously, Black neighborhoods are more frequently subjected to constant policing while White neighborhoods receive comparatively less attention. This disparity is a result of historical processes like redlining and gentrification, where Black communities are displaced by wealthier White individuals, pushing them into neglected, economically disadvantaged areas (Urban Displacement Project<sup>17</sup>).

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<sup>15</sup> “Sharecropping,” PBS, <https://www.pbs.org/tpt/slavery-by-another-name/themes/sharecropping/>.

<sup>16</sup> “Scientific Racism,” Harvard Library, <https://library.harvard.edu/confronting-anti-black-racism/scientific-racism>.

<sup>17</sup> “What Are Gentrification and Displacement,” Urban Displacement, <https://www.urbandisplacement.org/about/what-are-gentrification-and-displacement/>.

The perception of Black people as inherently “dangerous” or “criminal” contributes to this unequal treatment. Black people only make up 13% of the U.S. population but represent 38% of people in jails and prisons (Prison Policy Initiative). Racial profiling practices such as “stop-and-frisk” further exacerbate these disparities as they provide discriminatory agencies (i.e. the police) with unrestricted access. Implemented under the guise of the “War on Drugs,” policies like stop-and-frisk disproportionately target Black men, often without probable cause (AP News<sup>18</sup>). This results in numerous unjustified stops, arrests, and incarcerations for minor offenses such as marijuana possession. Only 5% of illicit drug users are African American, yet somehow African Americans represent 29% of those arrested and 33% of those incarcerated for drug offenses (NAACP). The continuous harassment by law enforcement not only disrupts individuals’ lives but also perpetuates the perception of Black men as criminals, especially when they accrue criminal records for minor infractions. In addition to this, sentencing policies such as the three-strike rule and minimum sentencing laws contribute to mass incarceration. Courts often fail to consider socioeconomic factors, leading to unjust outcomes for minor offenses or individuals facing harsher penalties due to the inability to attend court hearings or afford legal representation (NAACP). Moreover, the right to legal representation, as enshrined in the Constitution, does not guarantee access to quality legal defense; it merely guarantees an attorney of some sort (6th Amendment). Many individuals are assigned inexperienced or overworked public defenders who lack the resources, time, or expertise to effectively advocate for their clients, resulting in unjust convictions and lengthy sentences. This systemic failure to provide adequate legal representation further undermines trust in the legal system and perpetuates cycles of injustice and inequality.

Finally, I will address how systemic discrimination and marginalization contribute significantly to entrenched inequality. Society often stigmatizes individuals labeled as “criminals,” deeming them unworthy of the same rights and opportunities as others due to their past transgressions. In California, for instance, convicted felons face a multitude of restrictions, including the loss of voting rights, travel restrictions, firearm ownership prohibition, ineligibility for jury service, diminished employment prospects, denial of public assistance and housing, and even the revocation of parental rights (The Law Dictionary<sup>19</sup>). Despite the nation’s espousal of freedom and democracy, these punitive measures effectively deny formerly incarcerated individuals the chance to rebuild their lives post-release. Contrary to the rehabilitative focus of many prison systems worldwide, U.S. prisons prioritize discipline over rehabilitation, exacerbating rather than alleviating individuals’ circumstances. According to a report by The Sentencing Project<sup>20</sup>, “Black Americans are

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<sup>18</sup> Aaron Morrison, “50-Year War on Drugs Imprisoned Millions of Black Americans,” *AP News*, 2021, <https://apnews.com/article/war-on-drugs-75e61c224de3a394235df80de7d70b70>.

<sup>19</sup> “What Rights Do Convicted Felons Lose?” *The Law Dictionary*, 2022, <https://thelawdictionary.org/article/what-rights-do-convicted-felons-lose/>.

<sup>20</sup> Nellis, Ph.D., “The Color of Justice: Racial and Ethnic Disparity in State Prisons,” *The Sentencing Project*, 2022,



incarcerated in state prisons across the country at nearly five times the rate of Whites.” The NCSL discovered that sentencing enhancements in California are applied disproportionately to people of color according to the state’s Committee on Revision of the Penal Code. The absence of robust reintegration processes leaves released individuals largely unable to fend for themselves, with limited support or resources to navigate life outside prison walls.

As a consequence, many former inmates struggle to secure stable housing or employment or to distance themselves from criminal influences, increasing the likelihood of re-offense. 650,000 Americans return to their communities from prison each year; half of them will return to prison within a few years. 75% of formerly incarcerated people are still unemployed a year after release; unemployment is the most important predictor of recidivism (NAACP). The evident disparity in treatment between the Black and White populations underscores the systemic racism ingrained within both institutional practices and societal attitudes. According to the NAACP, 65% of Black adults have felt targeted because of their race. 84% of Black adults say White people are treated better by police and 63% of White adults agreed based on 2019 research on police relations. 87% of Black adults say the U.S. criminal justice system is more unjust towards Black people and 61% of White adults agree. This systemic neglect and devaluation of Black lives perpetuate cycles of inequality, reinforcing the notion that the government prioritizes the well-being and interests of the White population over its Black citizens.

### Concluding Remarks

Why is this important? Oppression is still occurring today because White Americans fail to understand the lingering consequences of oppression. Noble writes, “White Americans acknowledge the historical oppression inflicted upon Blacks...most fail to see the contemporary significance of these events....many perceive racism as flourishing today, not in American society, but in the imagination of Black activists” (51). This is crucial because racism is not outdated but is an ongoing, powerful force that severely limits Black men’s positions and aspirations. This carries weight because when a specific segment of the U.S. population faces marginalization, it undermines the entire nation’s progress due to its own internal policies and decisions. To foster overall advancement, we must uplift every sector of society, regardless of race. Progress hinges on unity; thus, our collective journey forward is essential for the betterment of the entire nation.

The historical legacy of slavery in the United States laid the foundation for enduring systemic racism, perpetuated through practices like sharecropping and discriminatory laws. Despite the abolition of slavery, these injustices persisted, manifesting in the

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<https://www.sentencingproject.org/reports/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons-the-sentencing-project/>.

disproportionate representation of Black men within the criminal justice system. This discourse has argued that systemic racism, policing policies, and social and political shortcomings contribute to this overrepresentation. Through a comprehensive literature review on legal consciousness and cultural dimensions of the law, supported by statistical analysis and synthesis of relevant literature, the pervasive impact of racism on Black men's experiences within the legal sphere has been thoroughly explored and showcased. Urgent systemic reform is needed to address entrenched inequalities and rectify the overrepresentation of Black men in the criminal justice system, ensuring true fairness and equality for all individuals.