

*A journal of
legal theory
and practice
“to the end
that human
rights shall
be more
sacred than
property
interests.”*

—Preamble, NLG
Constitution



Race & Criminal Injustice Theme Issue

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editor's preface

Criminal justice in the U.S. has always been color-coded. The extent to which the influence of white supremacy—including its latest mutation, white privilege hidden in the guise of “color-blindness”—has predominated has varied according to time and place, but has never been wholly absent. It’s a cancer the nation has never been able to cut out of itself.

The reality of this racial ideology is at once too obvious for most blacks to doubt and too difficult for most whites to genuinely acknowledge. Blacks are arrested, incarcerated, and menaced by police violence at significantly higher rates than whites. To residents of black communities, the presence of this especially virulent and invasive aspect of oppression is as immediate as being thrown up against a wall and patted down. Whites are privileged by their skin color in a thousand different ways, but perhaps never more dramatically than when it comes to their interactions with law enforcement. This privilege carries with it a blinding effect. 64 percent of the U.S. population is white, 13 percent is black. Yet currently more blacks than whites are incarcerated.¹ Clever minds have been able to convince themselves that there are reasons for this uniquely American form of ethnic semi-cleansing beyond anti-black prejudice. Perhaps it’s true that other reasons—a colorblind contempt for the poor, for instance—might contribute to the great disparity, but nothing other than abiding racism can even begin to fully make sense of it. Racism is to American social life something like what Christians claim the devil is to ethics—it functions most effectively when its adherents deny its existence.

History has shown that, in the end, racial privilege is maintained for the simple and obvious reason that its beneficiaries enjoy its perks, which have always been substantial. However, largely as result of the Civil Rights Movement, our collective consciousness has changed over the past few decades. Racism that is too obnoxious and overt has become taboo and is ferociously condemned. The Trojan horse language of color blind neutrality, furtively carrying bias in its middle, has risen to cultural orthodoxy. The perks of

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**RACIAL DISPARITIES IN
PUNISHMENT AND ALIENATION:
REBELLING FOR JUSTICE**

Introduction

*The challenge of the twenty-first century . . . is to identify and dismantle those structures in which racism continues to be embedded. This is the only way the promise of freedom can be extended to the masses of people.*¹

This article provides a framework for responding to the need for racial reconciliation in the United States that has been the focus of sociologists; historians; activists; and civil rights, human rights and peace organizations for more than 25 years.² It enters this dialogue by focusing on the intransigence of racial disparities in the United States criminal punishment³ system and the role of purposeful subordination in creating and maintaining these racial disparities. The simple yet seemingly difficult to accomplish remedy for achieving racial reconciliation is to acknowledge the fracture of human relationships caused by the horrific crime of slavery and its legacies, and to heal the fracture—not simply apologizing, asking for or expecting forgiveness, or “letting bygones be bygones.” Therefore, if reconciliation is to truly occur, it must be what Allan Boesak and Curtiss DeYoung term “radical reconciliation,” a “transformation of persons and societies . . . to restore . . . communities after, despite, and beyond realities of oppression, exploitation, division, and alienation.”⁴ Rather than focusing on the underlying causes of the racial disparities in the punishment system, the legal system and state and federal legislatures ignore, rationalize or exacerbate these disparities, avoiding the clarion call for fundamental changes in the punishment system and ultimately in the United States generally.

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This article is yet another attempt to sound the alarm for fundamental policy and practice changes to halt the continued marginalization and devaluation of African people in the United States. It is the progeny of my 35 years of work in the criminal punishment system and other areas of human and civil rights activism. During these 35 years I have been overwhelmed by the sea of black, brown and red faces in the prisons and jails in the United States. My journey began in 1978, when I began working as an attorney in the United States Department of Justice, Civil Rights Division, Special Litigation Section.⁵ My caseload primarily involved prisoner rights litigation. The journey continued when I joined the ACLU National Prison Project. I saw firsthand creeping mass incarceration despite the decreasing crime rates. The racial disparity existed in male and female prisons, although there were more males in absolute numbers incarcerated and the caseloads consisted of more male prisons.

In July 2011, I became the inaugural director of the University of Arkansas at Little Rock Institute on Race and Ethnicity, and continued my lifelong focus on the criminal punishment system. I created the Racial Disparities in the Arkansas Criminal Justice System Research Project. The racial disparities in Arkansas mirror the national pattern of consigning black people, particularly black men, to the bowels of the prisons at a significantly higher rate than whites.⁶ When I contemplate the significant racial disparities in the criminal punishment system I am struck by what appears to be an obvious injustice. I am convinced, and the data confirms, that black people are no more innately criminal than white people. It is also clear from studies and opinions in a number of cases that a great deal of this disparity is the product of racism—conscious, unconscious and structural.

My many years of ruminating on the racial disparities in the criminal punishment system and considering strategies to minimize, if not eliminate, these disparities have led me to the conclusion that the blame for the disparities is shared by a more insidious process than the exercise of conscious or unconscious racist choices by legislatures, police, prosecutors, juries and judges. It is purposeful subordination of African people that is at the head and the base of disparate incarceration rates between blacks and whites. This purposeful subordination leads to structural racism in the United States, which manifests itself in the reliance on stereotypes of blacks, especially black males, as criminals and innately dangerous and violent. These stereotypes also create a self-fulfilling prophecy that together with conscious racism sustain the disparities in incarceration.

These insights over the years have led me to fully empathize with Patricia Williams' statement in *The Alchemy of Race and Rights: Diary of a Law*

Professor that when faced with yet another example of racism in her work, she confronts the depression by pulling herself up from bed “trying to decide if she is stupid or crazy.”⁷ Professor Williams shares that she then “sits down to write, even when I’m afraid I may produce a death poem.”⁸

This article is my effort to pierce this despair and examine the role of subordination in this process and propose a framework for analyzing systems, institutions, policies, and practices to determine whether they support and continue the racial hierarchy. The analytical frame focuses on identifying and dismantling subordination, which is the “process of holding or rendering of lesser importance, as through racism, patriarchy, or classism.”⁹ I propose rebellion as a remedy for subordination and alienation. It is my hope that both those engaged in rebellion and well-intended policy makers will dismantle the mechanisms that sustain the racial hierarchy—resulting in radical reconciliation. Questions that arise in this examination include whether the criminal punishment system

- continues or dismantles subordination;
- exacerbates or ameliorates the conditions caused by subordination;
- sustains itself and its role based on subordination and negation of human value; and
- avoids addressing the role it plays in maintaining the racial hierarchy because it would challenge the fundamental foundation of the United States, requiring excavation and rebuilding.¹⁰

I first provide an overview of the problem followed by a discussion of subordination, naturally leading to a discussion of the role subordination plays in the creation of anomie and alienation in the black community. I then argue that there are a number of responses by black people to this alienation, one of which is criminal behavior—thus, providing some “justification” for the incarceration rates. In addition to conscious and structural racism, therefore, this alienation, which includes both normlessness and hopelessness—the “hollowing out” of a people—is an enabler of crime in the black community. I conclude by suggesting that rebellion is the way out of this quagmire of subordination, alienation and crime—a rebellion that includes the historic models used in the “slave trade,” slavery, Jim Crow and now—massive resistance to the structures that are destroying the group in “whole or in part.”¹¹ To successfully lead to radical reconciliation, this rebellion must dismantle societal systems that support devaluation of people of color or over-valuation of whites, ending racial subordination.

I. Overview of the problem

This insidious process of subordination of African descendants results in their alienation from the culture dominated by the descendants of those who

enslaved their ancestors in the United States. It requires the “hollowing out” of the identity of African people.¹² This subordination is the result of a series of violent, tragic acts that began by stealing and warehousing Africans in dungeons in Africa; transporting them packed like sardines in “slave ships;” buying and selling them like cattle in U.S. ports including South Carolina, Baltimore and St. Louis; and legitimizing the system of chattel slavery with its hallmark of violence and subjection to degrading, inhumane treatment, wherein millions of Africans became the “property” of primarily European Americans.¹³ It continued through Jim Crow and the transition from conscious racism to structural racism.¹⁴ This violence coalesced with social mores that created the “dos and don’ts” of relationships between so-called whites¹⁵ and all others. Indeed, the process of building a white supremacist society necessitated creating a legal definition of whiteness and thus excluding or subordinating those not identified as white.¹⁶

The criminal punishment system is a primary justification for the continuation of racism today—it provides “proof” that blacks and whites are not equal, that whites are superior. It justifies and excuses all types of dismissive, demeaning and inhumane treatment of black people particularly because it is rationalized as being a matter of “public safety,” i.e., the “protection of (white) society.”¹⁷ It is a system created to continue the oppression of African descendants that was slavery. This system, however, has caught in its snare white people, so that the racism-based tool of oppression envelopes those whites who have been marginalized, primarily by class, as well.¹⁸

Yet, whether consciously or not, the system of subordination to which black people were and are subjected, creates conditions that exacerbate exponentially the role played by conscious racism. This subordination has led to anomie, a sociological theory created by Emile Durkheim in the 1800s that served as the basis of his analysis of crime and criminal behavior.¹⁹ His theory was that as society became more industrialized, people were separated from their community and its norms. Industrialization created unlimited desires and possibilities that were difficult, if not impossible to achieve, given its class restructuring. This resulted in anomie or normlessness—a feeling of disconnection from society. As a result, criminality increased. In the previous, more agrarian society, people were grounded in the land and choices were limited and heavily monitored by a close-knit community.

Robert K. Merton built a sociological theory of the sociocultural sources of deviant behavior on Durkheim’s theory of anomie.²⁰ He suggested that there are two important elements of social and cultural structure that when out of balance can result in deviant behavior: (1) culturally defined goals, purposes and interests—the aspirational reference; and (2) the social structure that defines, regulates, and controls the acceptable modes of achieving these

goals. “Aberrant conduct, therefore, may be viewed as a symptom of dissociation between culturally defined aspirations and socially structured means.”²¹

Neither Durkheim’s theory of anomie nor Merton’s formulation addressed racial subordination and the role it plays in the development of anomie. If racism is injected into their theories it provides additional insights into the subordination of African people. These theories would then lead to a conclusion that extensive private and public blocking of access to the material and status desires created by capitalism, the so-called American Dream, defined by Merton as monetary success,²² is what El Hajj Malik Shabazz (Malcolm X) called an American Nightmare for African descendants, and results in anomie.²³

Sociologists and other scholars developed Durkheim’s theory of anomie to make it synonymous with, or a product of, alienation, describing anomie and alienation as conditions that result in hopelessness, normlessness.²⁴ Most scholars cite Karl Marx as the source of the theory of alienation.²⁵ The confluence of the theories seems to have been made tacitly—perhaps because the basis of both theories is industrialization and creation of more distance between the product and the producer.²⁶

Whether one accepts the view that anomie is actually a product of alienation, or not, the “critical criminologists” rebuke the sociologists who embraced and developed Durkheim’s theory of anomie for avoiding the obvious conclusion: capitalism created anomie (alienation) that often leads to criminal behavior. The critical criminologists suggest that these sociologists do not take the theory to its natural conclusion—that the provision of full and equal access to the indicia of wealth and status decreases alienation, and results in a decrease in criminal behavior.²⁷ Similarly, reformers of the criminal punishment system fail to take the racial disparities analysis to its natural conclusion and support radical changes to exorcise the evils of racism.

The solution often embraced is assimilation. If black people would just internalize and display the values of white society, usually called “the mainstream,” they would not be anomic or alienated. This formulation thus implies that assimilation would decrease crime in the black community, or decrease identification with an oppressed black community. Assimilation is posited as an appropriate response to and a requirement for escaping the pain of being “black,” which resulted in black subordination that led to anomie and alienation. In this context, however, assimilation is actually a form of alienation—alienation from oneself and one’s group. Assimilation requires the giving up of a previous identity in order to take on the identity of the group with which you are assimilating. It is a loss and not a gain because the person loses some essential aspect of who she is to embrace who she is not.²⁸

The activist theory to redress racial disparities is a rewrite of theories to explain the achievement gap in education, disparate unemployment rates, property ownership and disparity in health conditions (or illness). To put it succinctly, black people remain victimized by the same forces of subordination that led to enslavement of their ancestors and that were necessary to keep them in the status of non-citizen, forced laborer, and now, second-class citizen.²⁹ Yet the subordination has become less conscious and often is not seen. “Slavery ended in 1865.” “Jim Crow ended in 1965.” “This is a post-racial society.” “Stop playing the race card.”

The frustration at not being able to convince everyone (or at least a critical mass) of the inane of these statements and have them understand and support ending the continuing legacies of slavery and Jim Crow, of which the current criminal justice system is a part—is numbing. As my friend and colleague, Charles Ogletree, often says, it is an unbroken chain from then to now. The target of the criminal punishment system was and is the group—Africans and descendants of Africans in the United States, not simply the individual.³⁰ It is this targeting that is the crime under international law.³¹ The system is designed not simply to punish individuals for wrongdoing but to make the group the wrong, the face of crime. Therefore, the result, whether consciously or unconsciously intended, is to provide a justification for the disparities in every indicia of well being as the group’s responsibility because it is simply “bad” and “not deserving” of better treatment. In fact, the group is being treated “fairly” and “equally” because it is receiving its just deserts. Consequently, it uplifts and supports the fiction of “white supremacy,” a social construct that is vacuous as there is no non-manipulated evidence to support it.³²

This analysis of how the criminal punishment system was and is used to subordinate black people and create conditions that make them more likely to be arrested, charged and incarcerated at disparate rates suggests how the criminal punishment system is used to maintain the racial hierarchy. I hope that this analysis will provide useful insights into how to deconstruct this construction of a white (male) supremacist society.

II. Subordination: Its role in creating racial disparities in the criminal punishment system

Subordination is a central process by which black people are alienated from the “mainstream” of United States society and relegated as a group to the classification of criminal/criminal type. If this alienation and subsequent relegation are to be halted, it is important to understand what subordination is, how it is accomplished, and the outcomes in terms of the quality of life for the subordinated and the subordinator. Perhaps as importantly,

is to understand how it feels. Absent a clear understanding, a commitment to developing meaningful strategies to end subordination and the resultant alienation, heal the subordinated, and rehabilitate the subordinator is meaningless. And, therefore, ending racial disparities in the criminal punishment system becomes virtually impossible.

A. What is meant by “subordination?”

Subordination is a major pillar of Critical Race Theory (CRT) analysis. The question posed by CRT is how a system subordinates people of color. In the context of law professors,

The common objective of CRT is effectuated through a method of legal analysis that encourages judges, legal scholars, and law students to adopt a more critical approach to the law and legal disputes. This methodology—called the ‘subordination question’—entails a two-pronged inquiry that asks (1) whether a rule of law or legal doctrine, practice, or custom subordinates important interests and concerns of racial minorities and (2) if so, how is this problem best remedied?³³

This leaves open the question—what is subordination? Richard Delgado and Jean Stefancic define subordination as the “process of rendering of lesser importance, as through racial discrimination, patriarchy, or classism.”³⁴ These descriptions of the anti-subordination focus of Critical Race Legal scholars and the definition proffered seem to leave out the texture of subordination—it becomes a legal concept and analysis. Subordination, in actuality, is a palpable process by which black people are relegated, as a group,³⁵ to the bowels of the United States’ society. It is the process critical to the creation and maintenance of white supremacy, the overvaluation of white people, and the devaluing of black people. “Racial discrimination” is a legal term culled from the Fourteenth Amendment that describes significant forms of subordination since its passage.

A major function of racial discrimination is to facilitate the exploitation of black labor, to deny us access to benefits and opportunities that would otherwise be available, and to blame all the manifestations of exclusion-bred despair on the asserted inferiority of the victims.³⁶

Yet, contrary to its group-targeted formation, remedying discrimination through the legal process requires a focus on the individual, not the group—the Supreme Court created requirement that maintains white supremacy.³⁷

B. The method of subordination is not benign

Subordination is a violent process that is initiated through overt force and brutality, and is maintained by the internalized violence of systems and social structures. Indeed, as will be discussed, the violence of subordination is often expressed by the subordinated in relationship with other members

of the subordinated group.³⁸ To maintain the illusion of white supremacy and the reality of disproportionately higher ranking in the indicia of well-being, white males who led the colonies and the nascent United States had to create a system of human value that placed white propertied males at the pinnacle of the society. Aptheker opines that the subordination of Africans, in fact, was necessary to the building of capitalism.³⁹ This creation of white supremacy was done violently, by physical force and imprisonment through slavery, creating a rationale for this inhumane treatment through propaganda that depicted black people as less than human and, therefore, proper subjects for the control of white people, particularly white propertied males.⁴⁰ Indeed, their depiction of black people as childlike⁴¹ paved the way for the patronizing way in which black people were treated then, and continue to be treated now.

C. Subordination and racial disparities in the criminal punishment system or *sine qua non*

In order for the racial disparity in those incarcerated to occur (including those on death row) and not result in a national outcry, people of color, most notably black people, have to be considered as somehow deserving of such cruel personal, familial, and community destruction. That “deservedness” flows naturally from the subordination imposed on them by a white supremacist system. The method of subordination reflects the times.⁴²

1. Chattel Slavery: 1660⁴³–1865⁴⁴

The trade for men was never easy nor simple. In the early days, traders sailed from port to port, kidnapping a few Africans and trading for goods until they had enough to make the voyage profitable. They soon abandoned this for more efficient ways of securing captives—hiring African middle men to raid villages deep in the interior or pitting kings against each other, convincing them to sell their enemies as slaves. . . . Once captured, the enslaved Africans began the months-long journey from the interior to the coast. Thousands died making the trek, their bleached bones marking the trail for succeeding coffles (caravans of enslaved Africans). . . . Those sold were often branded, bound and herded into slave dungeons where they were held for weeks or even months until there were enough bodies to fill a ship.⁴⁵

The horrors of slavery are well-documented in numerous texts including *Lest We Forget*,⁴⁶ *Twelve Years a Slave*,⁴⁷ *From Slavery to Freedom*,⁴⁸ *Uncle Tom's Cabin*,⁴⁹ *In the Matter of Color*,⁵⁰ and, *Shades of Freedom*.⁵¹ The above quote from *Lest We Forget* provides support for the conclusion that the aegis of the crimes of slavery was in the subordination of African peoples that began when white exploiters stole and purchased Africans. The purposeful acts of dehumanization of Africans began in their theft and purchase for the benefit of the “slave traders” and continued through their placement in dungeons such as in Elmina and Cape Coast, Ghana and in Goree Island, Senegal. These dungeons were “deep inside the fanciful castles built by strangers and forti-

fied by huge cannons, in cave cellars hewed out of massive rock with a sole grate for air and light.”⁵² Enslaved Africans stayed in these dungeons for as long as four months until taken through the “door of no return” and placed on ships for a voyage to the Caribbean, Europe or North America. This began the voyage known as the Middle Passage or Maafa (the massive disaster).⁵³

The sole source of light and air was denied men and women who resisted. They were placed in dungeons labeled for “recalcitrants” and left to die; serving as one of the first obvious acts of punishment for insubordination—mental and physical. They were a message to other captives of the consequences of resistance—serving as what we would currently call a “chilling effect” on efforts to maintain human dignity and freedom.

They were chained and packed into ships like sardines, suffering the indignities of having a fellow captive die over, under or next to them as well as being subjected to the bodily eliminations of living captives. Women were raped both in the dungeons and on the ships by the “overseers;” often impregnated and having their child become enslaved by virtue of her birth. Resistance to this enslavement on the ships, from active attempts to overtake the ship to suicide, was futile⁵⁴—the ships continuing to ports, disembarking captives who became forced free labor and sexual objects for primarily white, propertied people.⁵⁵

These heinous acts of subordination, committed for the sheer purpose of controlling and making submissive people to serve those who were able to purchase them, were coupled with acts to deepen the physical, mental and spiritual alienation of the enslaved and enhance reliance on the “master” and his culture. They were stripped of their identity with a particular tribe and particular spiritual practices, and, to solidify the subordination, they were denied the right to learn to read and write in the new language—English.⁵⁶ Their relationships were violable in any number of ways, including the act of “selling” an African to someone without regard to relationships they may have created, including that of parent and child.

Mary Prince, a former slave woman, tells us: He took me by the hand and led me out to the middle of the street, and turning me slowly around exposed me to the view of those who attended the venue. I was soon surrounded by strange men who handled me the way a butcher would handle a calf . . . I then saw my sisters led forth and sold to different owners . . . When the sale was over, my mother hugged and kissed us and mourned over us, begging us to keep up a good heart . . . It was a sad parting, one went one way, one another and our mammy went home with nothing.⁵⁷

The subordination required to maintain a slave society was consciously imposed.⁵⁸ According to Kenneth Stampp, there were five steps that were used to “maintain fear and control.”

1. Establish and maintain strict discipline.
2. Implant in the slave a consciousness of personal inferiority.
3. Awe the bondsman with a sense of the master's enormous power.
4. Persuade the slave to take an interest in the master's enterprise and to accept his standards of good conduct.
5. Impress in the slave his utter sense of helplessness to create a habit of perfect dependence.⁵⁹

Slavery existed throughout the colonies and in the United States. Vermont was the first state to abolish it in 1777 (although not admitted to the United States until 1791), followed by Massachusetts in 1780, New York in 1827 and Connecticut in 1848, one among several northern states that embraced a gradual abolition process.⁶⁰ It then became a predominantly southern and south-midwestern⁶¹ institution with the exception of Delaware, which embraced slavery until the passage of the Thirteenth Amendment. There were exceptions to the brutal maltreatment of enslaved Africans—some “masters” allowing the enslaved African freedom to sell his labor to others and keep all or some portion of the money, others allowing the enslaved to be taught to read, and others who seldom, if ever, used brutal force against the African—these “kindnesses” were the exception and not the rule.⁶²

Punishments for “crimes” were left to the “master” and were often harsh, such as whipping barebacked, losing a limb or even death.⁶³ Seldom were the enslaved subjected to the “justice” system of the town or city in which they were enslaved. When they were, their punishments were harsher than punishments for similarly situated whites.⁶⁴

In 1865, Congress abolished slavery.⁶⁵ The institution that operated for almost 250 years was legally dismantled and Africans, most of whom lived a life dependent on their “masters” to provide the bare minimum of clothing, lodging and food, were now “free.” There was no provision made for their care and maintenance at the time of emancipation either through the Thirteenth Amendment or the earlier Emancipation Proclamation issued by President Lincoln, freeing those Africans enslaved in the Confederate states.⁶⁶ Their “freedom” was the only thing the government legislated for all enslaved although some in the military and others in the church and philanthropic communities attempted to provide assistance to the impoverished, destitute emancipated Africans.⁶⁷

Congress created the Bureau of Refugees, Freedmen, and Abandoned Lands (known as The Freedmen's Bureau) in March 1865 as an agency under the Department of War, re-authorizing it until its dissolution in 1872.⁶⁸ The Freedmen's Bureau provided health care, food, clothing and job assistance and made available land for leasing to the freed Africans.⁶⁹ As noted *supra*,

in an effort to pacify the confederate whites whose land was taken and given to these Africans via General Sherman's Field Order No.15, the land was taken from the Africans and returned to the confederate whites.⁷⁰

2. From Slavery to Emancipation to Jail

The enslavement of Africans was a crime against humanity⁷¹ and emancipation was essential to end that fundamental violation of human dignity. Participating in the struggle for emancipation of enslaved Africans for many whites was a noble position and one for which they fought. Emancipation, however, did not end the inhumane treatment of Africans. Many Africans found themselves in a position of vulnerability, for whites to use and misuse for their own benefit.⁷²

Lynching of black men, and to a lesser degree, black women,⁷³ and the convict leasing system⁷⁴ were critical to re-establishment of the racial caste system in the South and the maintenance of the myths of black bestiality and inferiority that were the foundation of the United States. How else could one explain the continuing sacrifice of the interests and humanity of African people from the European settlements in North America to the founding of the United States? Manifest Destiny, a so-called "God-given" right to conquer peoples and settle on their land, was the underlying rationalization for all acts of cruelty to people of color generally and African peoples specifically.⁷⁵ The black-male-as-rapist lie that frequently was the rationalization for lynching was built on a myth that black males were out-of-control sexual animals who particularly lusted after white women. It was at best a veiled attempt to destroy the white man's competitor, while building on the myth of the purity of white womanhood.⁷⁶

The convict leasing system was created simultaneously with the onslaught of lynching. White businesses profited by local legislation that created the Black Codes—a punishment system that targeted black males and was designed to build on their status as freed "slaves" or the immediate descendant of a freed "slave" and keep them in their subordinated role.⁷⁷ Black males in most southern towns and cities were victimized by a punishment system that arrested and convicted them of crimes specifically designed to target them and then were leased to businesses who worked them for free, only paying the jurisdiction the leasing fee.⁷⁸ Their treatment was often worse than the treatment of enslaved African men since there was no investment in keeping them healthy and alive.⁷⁹ The disregard for and destruction of the black family continued, as in slavery, and in fact was worse, since in slavery there was no realistic anticipation of the sanctity of the black family.

Convict leasing was legally abolished in the early 1900s although it continued until the mid-1900s.⁸⁰ However, lynching continued for some time

with the tacit support of the United States Congress, who failed to pass any anti-lynching legislation.⁸¹ At the same time local, state and federal governments joined with the private sector to engage in rank racial discrimination in virtually every walk of life.⁸² Segregation was far from separate but equal.⁸³ Accommodations provided African people were far from adequate, reflecting another aspect of subordination—“not good enough”—and therefore, deserving of less quality of care and service. At the same time, vagrancy laws and other discriminatory treatment within the punishment system led to an increase in the number of blacks under that system’s supervision.⁸⁴

The migration north by blacks, beginning in 1915,⁸⁵ only led to an increase in the discriminatory treatment of African peoples in the Midwest and North and an expansion of the punishment system.⁸⁶ They were targeted by this system, particularly black men, rather than being provided the national (and local) support needed to integrate into the society. This exclusion and subordination were not merely the treatment to which poor, unskilled blacks were subjected. Institutions of higher learning closed their doors to accomplished blacks and associations for professionals, such as the American Bar Association, and the American Medical Association, refused membership to African Americans who had successfully completed professional schools and passed the required state exams.⁸⁷ The federal government was silent on these practices. As with lynching, it was also silent on the targeting of blacks by the local and state punishment systems; and, indeed, passed crime legislation that disproportionately affected African peoples.⁸⁸

3. Now we get it. Or do we?

The passage of the Civil Rights laws in the 1960s, on the heels of massive demonstrations that received worldwide attention due to the advent of television, was anticipated as marshalling in a new era—one in which racial equality was more than a phrase and a lofty goal.⁸⁹ Yet, within 10 years of the passage of laws and the development of affirmative action programs to remedy four centuries of brutal subordination and denial of access, whites challenged these efforts claiming “reverse discrimination.”⁹⁰ This primarily successful assault on the effort to remedy the injuries caused by the policies and practices of public and private institutions discriminating against black people is yet another example of the well-being of blacks being sacrificed to preserve white interests and well-being. Indeed, it is an example of white society accepting and embracing black subordination as normative.

Yet, despite this hue and cry for fairness and equality—meaning white supremacy—in the indicia of well-being, such as education and employment, there was no such outcry to end the targeting of black people by the punishment system. Congress and state legislatures passed laws to increase

punishments for crimes most associated with blacks and provide harsher punishments for repeat offenders, despite the fact that the evidence was clear that these laws “disproportionately target African Americans and Hispanics.”⁹¹ The mandatory minimums and three strikes and you are out laws were the punishment system’s response to the fear (false evidence appearing real) that crime was the real enemy and not the lack of opportunity and racial targeting of blacks. This focus on punishment of African Americans rather than providing just and fair reparative programs to a people that were purposefully subordinated for the benefit of an elite group of whites (resulting in white privilege) is the engine of today’s system of mass incarceration.⁹²

This subordination experienced by African peoples from enslavement and throughout their presence in the United States is the parent of African American alienation. It is magnified and maintained today due to the continual failure to address the injuries caused by it—remedies that require beneficiaries of the subordination to give up some of their claims to privilege.

III. Subordination: Anomie and alienation

The linkage among subordination, anomie, and alienation and their relationship to crime has been explicitly studied. Sociologists have observed and studied the relationship between anomie, alienation, and crime as western society has developed from a largely agricultural economy to a primarily technology-based one.⁹³ Racial and class differences have also been studied in more recent years.⁹⁴ Critical criminologists have made the connection among capitalism, alienation, and crime;⁹⁵ and, some connection to slavery has been made in discussing the growth of capitalism through the expansion of private property.⁹⁶ Yet, beginning with Durkheim and Marx, the concepts of anomie and alienation have been tied to the examination of the relationship among crime, people and production, and not the purposeful violent subordination of people for private and public gain.⁹⁷

The principles of anomie and alienation, however, are a natural outgrowth of the purposeful subordination to which African peoples have been subjected. The violent separation from African communities, the severe restrictions on the formation of new communities once forcibly transported to North America, and the cruel assaults on black people and communities throughout the history of the United States support a conclusion that anomie and alienation play a controlling part in the crime committed by African peoples in the United States.⁹⁸

A. Durkheim, anomie and crime

Emile Durkheim thought that crime was a normal component of society.⁹⁹ His theory of anomie, therefore, was not a theory that sought to delegitimize crime; rather it appears to explain the difference in crime when people are

tied to their labor and when industrialized society changes the relationship between people and their labor. In Durkheim's terms, anomie is created in the move from a mechanical society, one that is agrarian, to an organic society, one that is more diversified and labor is less connected to the complete product.¹⁰⁰

"Anomie" is a Greek term that means normlessness.¹⁰¹ For Durkheim, anomie occurs when people are separated from their smaller, agrarian communities where everyone knew everyone and where they are intimately connected and then moved to a larger and more technological community that lacks either the close ties associated with the agrarian community or the close relationship between their labor and the product of their labor. In the agrarian community, when a crime (violation of the rules of the community) occurred it was dealt with immediately by the community, either formally or informally.¹⁰² There was a relationship between the offender and those who created and enforced the law. Deviance is seen as related to a sense of belongingness and that sense of belongingness is weakened as society develops from simple to complex.¹⁰³ Or, in the analysis presented in this article, from identification with a society to being cut off from that society, and being dropped into one that does everything it can to make you not belong.

Accordingly, anomie is a result of a forced division of labor—a division of labor demanded by an industrialized state in Durkheim's era and even today, as the theory is applied to modern society.¹⁰⁴ Anomie is unlikely to occur if the role people play in society is determined "spontaneously" based on their natural abilities and initiative with nothing "unduly" hindering or favoring their competition for position in society.¹⁰⁵ This would lead to the most capable obtaining positions in society¹⁰⁶ as compared with the current status of the United States where forced anti-competitiveness has resulted in white males, in particular, occupying the most sought-after positions in society.¹⁰⁷ Durkheim's view was that equality in position in society would exist if inequalities in position reflected natural inequalities that exist in people, not those imposed by society.¹⁰⁸ Indeed, anomie to Durkheim was impossible "when interdependent organs are aware of the need they have for each other and have an active feeling of mutual dependence."¹⁰⁹

Of course such "spontaneity" and egalitarianism did not exist in the development of capitalism. Durkheim's theory of how to avoid anomie was thus theoretical and, at best, wishful thinking. In the capitalist development of the agrarian south and northern industries, people were dominated by social mores and laws that determined the role they would play in the capitalist motif. Even without the enslavement of Africans, the roles that people played in society were restricted and people were often forced into roles that were

not consistent with their innate abilities.¹¹⁰ In large part, the modernization of society has caused anomie through the division of labor and the weakening of what sociologists call the “collective conscience,” a “weness.”¹¹¹ Modernization and this breakdown in human connectedness that results in anomie are reflected in a lack of regulations and integration: people no longer care for others, resulting in social ills, including crime.¹¹² Durkheim’s theory of anomie is that people become fragmented or disassociated from their center and institutions become less effective in controlling individual behavior. Thus, crime increases.¹¹³

Robert Merton recognized the validity of Durkheim’s theory of anomie. His focus was on the United States and thus he adapted the theory of anomie to the United States and the times in which he wrote.¹¹⁴ However, he, like Durkheim, failed to explicitly integrate the role of racial exploitation and subordination into his theory of anomie.

B. Robert Merton: Anomie as a disconnect between culture and social structure

Merton’s adaption of Durkheim’s theory of anomie can easily accommodate an analysis of racial oppression. He bases his theory of anomie on culture and social structure, identifying culture as the common normative values and the social structure as the means for obtaining those values.¹¹⁵ According to Merton, the primary cultural goal in the United States is the attainment of the American Dream—economic wealth and success. When the social structure restricts the legitimate attainment of the normative goal of wealth and success, anomie is the result.¹¹⁶ Merton asserts that part of the American dream that wealth and success are possible for everyone; however, it is the human-made structures that interfere with this attainment.¹¹⁷ This construction of anomie led to Merton’s development of what is termed “strain theory.” The inability to obtain the cultural goal of wealth and success due to social structure restrictions places a strain on individuals, particularly members of the lower social economic classes, such that they have to develop alternative means of adapting.¹¹⁸

The expansion of anomie to the strain theory continues to incorporate Durkheim’s view on the increase in crime due to anomie—the disconnection from society. In strain theory, the stress on materialism as the indicator of well-being and success in the United States and the structural blocks to obtaining this cultural goal lead to an increase in the disconnection between individuals, groups and the society, resulting in normlessness and increased criminality to obtain the goal.¹¹⁹ One strain theorist, Robert Agnew, addresses social and distributive justice concerns in describing the resultant impact: people perceive they have been unfairly treated or have not received the

benefits they are due.¹²⁰ Steven F. Messner and Richard Rosenfield describe this at the macro level and use the term institutional anomie, which according to Bohm and Vogel “is the leading contemporary version of anomie theory.”¹²¹ The indictment is of the American Dream. They assert that it is the quest for wealth and success, to be somebody in the U.S. society that has resulted in higher crime rates caused by the normlessness that is anomie. The American Dream as “a commitment to the goal of material success, to be pursued by everyone in society, under conditions of open, individual competition” is sabotaged by social structures that were created with the intent of preventing access to legitimate means of obtaining the goal by African peoples.¹²²

Merton’s adaption of anomie and the development of strain theory as an explanation for anomie have been criticized, along with Durkheim, by critical criminologists who view them as stopping short of embracing the conclusion that the theories of anomie and strain necessarily lead to the conclusion that there must be a radical reform of capitalism to increase belongingness and decrease crime.

C. Critical Criminologists: Rebellion is the only answer to anomie/ alienation and the resultant increase in crime

So, what action strategy embraced by well-meaning people will lift the social structural restrictions on access to all things leading to individual and group well-being to counter the anomic condition? Rebellion, identified by Merton as a way in which people adapt to anomie, is the strategy that will make systemic change. Critical criminologists who, supported by social science studies,¹²³ relate crime rates to anomie, suggest that Durkheim’s and Merton’s theories contain the answer. They criticize them for opting to limit their focus to describing anomie and its causes and not advocating for the solution.¹²⁴

The power relationships in the United States were ignored by Merton, thus resulting in relegating the marginalized to “compete for an inequitable share of wealth and power.”¹²⁵ Merton’s focus, therefore, is on individual responses. He identifies five ways that people address anomie: (1) conformity to the rules; (2) innovation, including crime; (3) ritualism; (4) retreatism, including addiction; and (5) rebellion.¹²⁶ Although Merton appears to have considered these methods only on the micro level, rebellion is also applicable on the macro level—rebellion by many against the system that entrenches people in life roles that block legitimate attainment of the indicia of well-being.¹²⁷

The class and race implications for anomie are profound: black people, particularly poor black people, are the most marginalized group in the United States—the group that has been purposely subjected to subordination, and

therefore the most likely group to be anomic and to engage in and be victims of criminal behavior.¹²⁸ Authors, such as Reiman in *The Rich Get Richer and the Poor Get Prison*¹²⁹ and Anderson in *Code of the Streets*,¹³⁰ discuss the link among race, class, anomie and criminal conduct. According to Anderson,

All these social consequences of persistent urban poverty and joblessness coalesce into acute alienation from mainstream society and its institutions, especially among the young. What has formed as a result is a kind of institutionalized oppositional culture, a reaction to a history of prejudice and discrimination that now finds its way into schools and other institutions; it makes meaningful participation in institutions dominated by those closely associated with the wider society problematic, if not impossible, for many. The most public manifestation of this alienation is the code of the street, a kind of adaptation to a lost sense of security of the local inner-city neighborhood and, by extension, a profound lack of faith in the police and the judicial system.¹³¹

The systemic causes of anomie or alienation from society, according to alienation philosophers and sociologists, have resulted in self-alienation—*not* having a center that is grounded in care and concern for yourself or others.¹³² It is one result of the “hollowing out” process that is subordination. As Anderson suggests, this state of alienation (anomie) has been disproportionately experienced by black communities.¹³³ The racial disparities in the criminal punishment system have a systemic cause that includes the purposeful subordination of African peoples resulting in anomie and alienation that increases African descendants’ representation in that system.

IV. Rebellion: Ending alienation and minimizing, if not eliminating, racial disparities

Anderson connects anomie to the overall despair in the inner city community, a despair that is reflected in many ways in their exposure to criminal conduct and the lack of meaningful response from the police and the judiciary.¹³⁴ Yet, these communities have not embraced the form of self-help that is called rebellion.¹³⁵ They are still waiting for the system that has created or exacerbated the alienation to cure it. As previously discussed, Merton posits, and some critical criminologists appear to agree, that rebellion is one way of addressing alienation, reducing crime or rectifying disparate representation among those engaged in, and accused of, criminal conduct. The other ways to respond to alienation posited by Merton are more individualistic in nature and are a form of withdrawal from the society or grappling with the pain of the subordination rather than attempting to change the aspects of society that have led to the alienation.¹³⁶ Since I am interested in systemic change, I focus here on rebellion and how it can be used to end the alienation that has resulted, in part, in the criminal punishment system’s racial disparities.

A. The faces of rebellion

What is rebellion? So often we think of rebellion as physical violence against the government.¹³⁷ The dictionary definitions of rebellion, however, allow for non-violent “rebellion”: “an effort by many people to change the government or leader of a country by the use of protest or violence; open opposition to a person or group in authority.”¹³⁸ African Americans have experienced both types of rebellion: first, the use of violence to attempt to change oppressive government policies and practices that were instituted for the purpose of subordination and creating and maintaining white supremacy,¹³⁹ and, second, the use of civil disobedience and other non-violent forms of protest to topple oppressive government policies and practices.¹⁴⁰ Indeed, the latter entailed violence as well; however, the violence was perpetrated in that instance by those who sought to maintain white supremacy, not those who sought to end racial oppression.¹⁴¹

B. The importance of rebellion in ending racial disparities in the criminal punishment system

Recall that anomie or alienation is a result of a lack of belonging to the society in which the person or persons find themselves. Criminal conduct, according to the theory of anomie and alienation, is the expected result when people are anomic, feeling this lack of belongingness in the society. Recall that Merton states that “aberrant conduct . . . may be viewed as a symptom of dissociation between culturally defined aspirations and socially structured means.”¹⁴²

In the history of the United States, black people have been exposed to the “extreme emphasis upon the accumulation of wealth as a symbol of success.”¹⁴³ Yet, black people have been structurally restricted, through slavery, Jim Crow, and continuing discrimination, from obtaining access to the culturally “acceptable modes” for achieving the modicum of success flaunted as the thing to have in this society.¹⁴⁴ One has but to review the history of legal barriers to achieving education, employment, and wealth, beginning with slavery, to gain a bird’s eye view of the structural interferences to achieving the “American Dream.”¹⁴⁵ Indeed, access to what this society defines as the morally prescribed ways of obtaining success—for example, investment, work at high-paying and high-status jobs—has been consistently restricted from black people. People are bombarded daily, however, through the media, voiced expectations, desires, and simply through the act of living, with the toys and prestige of having “made it” in the United States. Thus, the “anti-social behavior is, in a sense, ‘called forth’ by certain conventional values of the culture and by the class structure involving differential access to the approved opportunities for legitimate, prestige-bearing pursuit of cultural goals.”¹⁴⁶

Rebellion is a way to collectively challenge the status quo of oppression, the daily barriers to access the means of achieving a sense of belonging, of being valued and allowed full access to the institutions and social structures that build “success.” Rebellion is collective protest.¹⁴⁷ It requires the energy of the group to focus on breaking the chains that keep the group confined outside the mainstream life of the society. It is a collective effort for liberation.

Fanon discusses the value of rebellion in decreasing, if not eliminating, criminal conduct of the oppressed in *Wretched of the Earth*.¹⁴⁸ Rebellion, “by reinstating the downtrodden, sets on foot a process of reintegration which is fertile and decisive in the extreme.”¹⁴⁹ Prior to the Algerian revolution, when Algerians lived under oppressive French colonial rule, Algerian criminality was rampant. It appeared to the legal system that Algerians by nature were criminal, violent, lazy, and liars. The Algerians who had accommodated the French occupation and oppression also embraced this stigma of the Algerian people.¹⁵⁰ The crimes that the Algerians committed under colonialism were primarily against other Algerians, and were frequently violent and fatal.

For a colonized man, in the context of oppression . . . living does not mean embodying moral values or taking his place in the coherent and fruitful development of the world . . . [Y]ou are forced to come up against yourself. Here we discover the kernel of that hatred of self which is characteristic of racial conflicts in segregated societies.¹⁵¹

Once the war began and people joined the National Liberation Front (FLN) and its military arm, the National Liberation Army (ALN), Algerian criminality was transformed, according to Fanon.¹⁵² He reasoned that this fact made it clear that the criminal conduct was not a result of some inherent moral deficiencies of the Algerian people but “the direct product of the colonial situation.”¹⁵³ The objective of the Algerian focused on ridding himself and his country of the oppressive forces to regain control of his destiny. So a man who, prior to being involved in the revolution, would kill his neighbor over a piece of bread, gave his family’s food supplies to companies of soldiers passing through his community on their way to engage the enemy.¹⁵⁴ According to Fanon, “It is commonplace that great social upheavals lessen the frequency of delinquency and mental disorders . . . [therefore, explaining the] regression of Algerian criminality during the revolution.”¹⁵⁵

Rebellion is in the very lifeblood of African Americans through the legacy of slave revolts and numerous periods during which black people organized to change the laws and practices that subordinated them and led to a feeling of alienation from this society.

Under the circumstances, success was not possible via insurrection. It should be noted, in this connection, that the only people to free them-

selves through rebellion from chattel slavery were the black people of Haiti—and there they counted 90 percent of the population, much of the nonslave population was not white, and the rebellion succeeded when the State power was weakened because of the French Revolution. But the slave plots and insurrections in the United States manifested a magnificent discontent; they did bestow a tradition of past struggle—even if muted in a racist society; and they helped rivet the attention of the nation upon the atrocity of slavery.¹⁵⁶

This tradition of struggle, of protest and rebellion, was continued post-slavery and is evidenced in the sit-in movement led by black students in southern cities and towns,¹⁵⁷ the Civil Rights Movement of the '60s led by Martin Luther King, SNCC, CORE, and including the Freedom Rides and Freedom Summer as well as the Black Panther Party.¹⁵⁸ These rebellions had some success, and the thwarting of many of these movements, most particularly the Black Panther Party, was a result of government infiltration and frame-ups resulting in long (in fact for some—lifelong) incarcerations and murders of activists.¹⁵⁹

C. Is armed rebellion to end subordination, the alienation that flows from this subordination and the role it plays in racial disparities in the criminal punishment system feasible or wise?

I say no to both the feasibility of an armed rebellion to end racial disparities in criminal punishments and the wisdom of such a rebellion.

1. Feasibility

An armed rebellion “requires enormous care, effort and dedication.”¹⁶⁰ It also requires the accumulation of arms and secrecy to strike the planned target without notice because, as during slavery, the planned targets have far more military and armed might than the rebellious forces.¹⁶¹ The military and police forces in the United States, including arms and other weaponry, far exceed any arsenal that revolutionaries could accumulate, even in the event that the revolutionaries are able to organize allies in other countries to supply them weaponry.¹⁶² An attempt to liberate black folk from the subordination endemic to white supremacy in the United States and thus end racial disparities in the punishment system through force, therefore, is probably a form of suicide.¹⁶³ As during slavery, it may also lead to even greater repression of those remaining who are sympathetic to the armed rebellion.¹⁶⁴

In addition to the vast differences in firepower, thus making a successful armed rebellion unlikely, a classic subordination tactic by the oppressor is to create allies from those in the oppressed group who betray the oppressed by revealing confidential strategies to destroy in whole or part structures that maintain their subordination. This was done purposely during slavery, as well

as during colonialism.¹⁶⁵ This creation of alliances between the oppressor and members of the oppressed, subordinated group is one form of assimilation.

Assimilation is both a tactic of the oppressor as well as a response of the oppressed to their oppression.¹⁶⁶ Assimilation is based on viewing black people as successful when they adopt “the behaviors, values, and appearances of white Americans.”¹⁶⁷ It is not simply that black people (or other people of color) choose to embrace some of the mannerisms, dress and even some values of the oppressor class, whites. Assimilation that goes to the core is a form of a loss of, or at minimum, a giving up of one’s true identity as an African who is a member of a subordinated group.¹⁶⁸ As in slavery, it results in the person identifying her interests more with the oppressor class than the oppressed. It results in betrayals by those members of the oppressed group who support policies and practices that maintain white supremacy and therefore the subordination of black people.

Many times this betrayal is done unconsciously. The assimilation is such an integral part of the person. I would call actions taken by reactionary blacks, including Justice Clarence Thomas, in opposition to affirmative action, a betrayal of black people, given that they offer no meaningful alternative to close the significant gaps caused by white supremacy through the forced non-competitiveness imposed on black people from the time of slavery through Jim Crow that continues to this day.¹⁶⁹ Other times, what appears to be acting in the interests of the oppressor and not the oppressed, are actions taken without thorough analysis or sufficient facts. For example, members of the Congressional Black Caucus supported the passage of the Anti-Drug Abuse Act of 1986¹⁷⁰ that included a 100 to 1 disparity in sentencing for crack cocaine as compared with powder cocaine. Once the impact of that differential on the black community became obvious, the Congressional Black Caucus joined other individuals and organizations in opposing the Act.¹⁷¹ Those members who supported the Act in 1986 did not consciously betray the interests of black people. They were uninformed and acted far too quickly in the heat of the drug epidemic in their communities, and thus performed a disservice to the black community throughout the country.

2. The wisdom, or lack thereof, of armed rebellion

The fact that any decision to engage in armed rebellion may be shared with an agent of the oppressor, knowingly or unknowingly, is one reason that engaging in such an armed rebellion is unlikely to be successful, and therefore, is unwise. The experience during slavery of rebellions being squashed, often before they could be implemented, supports this conclusion. The experiences most notably of the Black Panther Party’s infiltration by government agents are yet another example.¹⁷² The 27-year imprisonment of Geronimo

ji-Jaga (Pratt) based largely on the false testimony of an informant,¹⁷³ and the murder of Fred Hampton in Chicago,¹⁷⁴ are just two more examples. Unlike the value of the slave revolts in shining a light on the atrocities of slavery, armed rebellion to end racial disparities in the criminal punishment system is unlikely to gain the positive attention of those who could be instrumental in changing the laws, policies and practices that are implicated in the cause of these disparities.¹⁷⁵ It would simply lead to death and injury on both sides and, reminiscent of the Civil Rights Movement, the Black Panthers, and slave revolts, draconian punishments for those who participate in the armed rebellion and their sympathizers.

In addition to these concerns and, to this writer, more importantly, an armed rebellion continues the physical violence and killing on which our current subordination (as well as the subordination of Africans worldwide) is built. I embrace the view that we should not initiate violence to end subordination and the racial disparities that flow from that subordination, much like Martin Luther King and Gandhi embraced the tenets of non-violence. On the other hand, I support the self-defense position of the Black Panther Party, El Hajj Malik Shabazz, and the Student Non-Violent Coordinating Committee—we have a right to defend our communities from the onslaught of violence by those who fear their loss of racial privilege which is created by force, violence, and subordination, including the massive campaigns from slavery to today that paint black people as inferior, virtually bestial, violent and oversexed, lusting after the wares of whites.¹⁷⁶

I disagree with Paul Butler's conclusion that to engage in armed rebellion over racial disparities in the criminal punishment system would be immoral and unjustified until such time as a majority of African peoples are incarcerated.¹⁷⁷ The racial disparities, where one in every 13 black men aged 30 to 34 was incarcerated in state or federal prisons in 2011, and 38 percent of those incarcerated in the United States are black,¹⁷⁸ are in fact at a critical point that is a "supreme emergency."¹⁷⁹ Yet, engaging in an armed rebellion at this time would only seed and reseed violence for the coming generations, thus not "giving peace a chance."

V. The face of rebellion in 2015 and beyond

We must engage in full-blown, non-violent rebellion to save black people and this country from the destruction that was Rome. This sounds dramatic, I know. However, if we seriously consider the growing divide between the haves and havenots, the control that is exerted over this society by the 1 percent who control the wealth of this country, and the United States Supreme Court cases that say corporations can spend, spend, spend to sway elections, to control the body politic,¹⁸⁰ we know that unless we organize,

organize, organize and mobilize, mobilize, mobilize, the policies and laws that will ensure a healthy society for all will be a distant dream. And, the racial disparities in the criminal punishment system will get even greater. In fact, we may get to the point, without rebellion, where indeed, Paul Butler's "supreme emergency" exists,¹⁸¹ yet there will be no one left with a social consciousness or ability to rebel and create a society that is truly for the people and of the people.

There is nothing new under the sun. The rebellion I envision is comprised of bits and pieces of the rebellions we have witnessed or learned about since the time of enslavement, with the exception of armed rebellion. The components include resistance, protest, and community organizing and development. The essential agreement is that we must say no to subordination of black people that leads to their disparate representation in the criminal punishment system. We will not compromise on that because, as we know from the work of Durkheim, Merton, Fanon and others, subordination leads to alienation, which increases criminal conduct. And, Fanon's analysis of the Algerian experience and the data we have on violence indicate that this criminal conduct includes a great deal of violence turned on the subordinated, not the subordinator. It is the vessel out of which self-hate grows.¹⁸² Participants in the rebellion include all of us—individuals, groups, and formal organizations—that have on our agendas ending the racial subordination and, therefore, racial disparities in the criminal punishment system.

A. Resistance

Resistance takes many forms, including refusing to participate in activities that strengthen and do not dispel subordination and, therefore, racial disparities. Africans and African Americans have resisted subordination since the beginning of what is called the slave trade. There were special parts of the slave dungeons that were reserved for "recalcitrants." These dungeons were smaller spaces and were places where those who refused to obey the instructions of the "slave drivers," and overseers were thrown to die.¹⁸³ During enslavement, resistance included work slowdowns or just stopping—the source of the claim that some Africans were "lazy."¹⁸⁴ Running away from enslavement, the most well-known organized process being the "Underground Railroad," was also a form of resistance.¹⁸⁵ Other forms of resistance included the challenge to Jim Crow laws seen in *Plessy v. Ferguson*,¹⁸⁶ for example, as well as the historic bus boycott in Montgomery, Alabama.¹⁸⁷ Freedom Summer, which included Saturday school for young and old, and the challenges to racism in the Mississippi State Democratic Party by the Mississippi Freedom Democratic Party, are other examples of resistance to subordination.¹⁸⁸ Recreation of the Freedom Summer Saturday

Schools throughout the country is a form of resistance that will decrease subordination and alienation, providing a sense of belonging.

Paul Butler's proposal for jury nullification in cases involving black defendants charged with victimless crimes¹⁸⁹ is a form of resistance. His proposal focused on black jurors engaging in jury nullification. I recommend that people of all races, genders and backgrounds be trained to engage in jury nullification so that striking all black people from a jury, which arguably would violate the law,¹⁹⁰ would not resolve the concern the prosecutor may have. Butler's modification of this proposal in the later article, "By Any Means Necessary: Using Violence and Subversion to Change Unjust Law,"¹⁹¹ should also be adopted and people trained to follow this tactic when called for jury duty. In this later article, Butler suggests that jurors engage in subversion by concealing any sympathies for the defendant or opposition to the imposition of certain types of punishments, for example, the death penalty; or, imposition of any type of punishment at all for certain types of criminal charges, such as distribution of crack.¹⁹² At all costs, we must resist the pull of the subordinator's so-called "concessions" to the movement concerning punishments, for example, the continuing disparity in the crack-powder cocaine sentencing structure, although reduced from 100:1 to 18:1, for no valid purpose—other than race.¹⁹³

Paul Butler's conclusion in his 2003 article on the legitimacy of radical action has not lost its validity in 2015. With the exception of a few states that have legislatively or administratively adopted racial impact statement requirements for legislation that proposes criminal punishments,¹⁹⁴ neither the courts, legislatures, nor executive branches of government have responded with legitimate and meaningful solutions to the continuing saga of racial disparities in the criminal punishment system.

The stigma of "black folk are violent, thieves and just plain criminals" attaches to all black people, whether we are engaged in criminal activity or not.¹⁹⁵ We witness evidence of this stereotype in the criminal punishment system—this stigma of being black in the United States—daily when black professional men are stopped driving in "white neighborhoods,"¹⁹⁶ when cabs pass up black men who are obviously not "street thugs,"¹⁹⁷ when elite stores refuse to "buzz-in" black people for no other reason but they are black,¹⁹⁸ when you are stopped and questioned merely because you are black,¹⁹⁹ when the assumption continues to be that the person who committed some heinous crime is a person of color and many of us breathe a sigh of relief when it is a white person,²⁰⁰ and, when a white man of Hispanic heritage can kill an unarmed black teenager and be acquitted of the murder²⁰¹ while a black woman gets sentenced to 20 years in prison for shooting a gun in the air to frighten her admittedly abusive husband, has that sentence reversed by an

appellate court and the prosecutor continues to seek a sentence of up to 60 years in prison in a retrial.²⁰²

B. Protest

Black people have participated in rallies speaking out against racial subordination since slavery. This is a more widespread experience for most black people and their allies than resistance. Two of the most noted black speakers protesting slavery were Sojourner Truth and Frederick Douglass. Indeed, Frederick Douglass's speech on July 5, 1852, "What to the Slave is July 4th?" is an exquisite speech of protest.²⁰³ Likewise, there were organized anti-slavery meetings and public statements supporting abolition by white allies, including William Lloyd Garrison.²⁰⁴

More recently, since the 1960s, we have witnessed massive demonstrations on the Washington, D.C. Mall, "The March on Washington," the Poor Folks March in Memphis (I Am a Man), and the demonstrations in Ferguson and St. Louis, Missouri and New York protesting the killings of young black men by the police. Less well advertised are the vigils that some groups organize when an execution is scheduled—often, with people holding candles outside the prison when the execution is in process.²⁰⁵ More recently, protests have taken the form of petitions, MOVE ON or Color of Change types, when people sign petitions to stop executions such as that of Troy Davis in Georgia. We must reinstitute these protests, yet do them on a regular basis, not just when some travesty has occurred or is pending. We must have daily, weekly, monthly demonstrations and vigils in front of the federal and state legislative buildings and the federal and state capitols, demanding the end to racial disparities in the criminal punishment system, including the demand to abolish the death penalty—a punishment that in its very imposition has been demonstrated to be fraught with unconscious racism²⁰⁶—a conclusion that even the United States Supreme Court had to admit.²⁰⁷ Again, we do not have to reinvent the wheel. We can and must join Moral Monday and Truthful Tuesday demonstrations in states that have them and create them where they don't.²⁰⁸

We must say "no" to the United States Supreme Court's accommodation to racist punishments made out of fear that the white supremacist system of punishment in the United States will be toppled.²⁰⁹ The judiciary has forfeited its role as a check and balance against legislative actions that violate constitutional rights. It has accommodated racism in criminal laws because to enforce the Fourteenth Amendment's requirement of equality in treatment and the Thirteenth Amendment's prohibition against involuntary servitude "except as punishment for a crime," would require legislators and prosecutors to put a hold on punishments that evidence racial disparities and "do the right thing" by eliminating the subordination inherent in the imposition of

these punishments. In fact, by allowing the racial disparities to exist with the evidence of, at best, unconscious or structural racism, states and the federal government are circumventing the Thirteenth Amendment and continuing a convict leasing system whereby black prisoners perform services for the state (and in some prisons—private companies) without being paid the minimum or market wage.

C. Community organizing and development

In order to have a rebellion, we must not only organize and participate in resistance efforts and protests that are inclusive of victims of racial subordination and their allies, we must also engage in grassroots organizing and community development. Grassroots organizing and community development will feed and sustain the resistance and protest efforts because they necessitate the engagement of people who have been reacting to victimization as well as those who have been activists against victimization. Grassroots organizing and community development must, to be effective in reducing subordination, the alienation that follows and the resultant increase in criminal conduct engaged in by the subordinated, include in all levels of activity those most susceptible to criminal “acting out”—children who have one or both parents in prison or who have a sibling or other close relative in prison and black people between the ages of 16 and 30.²¹⁰ To really be preventive, grassroots organizing and community development must also involve younger people—who may have not yet had any involvement with the criminal punishment system, or only minor involvement.²¹¹

Likewise, we must involve those who are currently incarcerated. We can do this in various ways, including integrating re-entry programs into the strategy of rebellion—going beyond how to get a job or go back to school to how to create jobs for those released from prison, mimicking projects such as Delancey Street in California that creates businesses operated by “ex-offenders.”²¹² The ex-offenders should also be integrated into other projects and programs on the grassroots level that actively engage systems of subordination, such as participating in Saturday schools for people of all ages where, as in the ’60s, black history is taught to children and adults—the curriculum should include identifying subordinative systems and strategies for addressing them. Those who are incarcerated, serving very long sentences of life or life without parole as well as sitting on death rows throughout the country, can participate by engaging with their children and families through visits, letters and phone calls, providing insights into their situation and engaging in strategy development to decrease the subordination, alienation and concomitant criminal behavior.

By engaging in grassroots organizing and community development, including youth in all levels of the work, we are taking seriously the experi-

ence of Algeria in the Algerian Revolution and putting in place a structure, built on rebellion against racial subordination, that will decrease the crime and violence in many of our communities.²¹³ We know that by directing the energy of the young people in collectively charting their own course, taking responsibility for their own destiny, their engagement in criminal conduct will significantly decrease. Such a concerted effort requires coordination. National and grassroots organizations that are currently working on these issues can develop the system of coordination.

This form of grassroots organizing and community development follows the model, to some extent, of the Black Panthers and requires mentoring programs to expand the content to include engaging in responsible behaviors in the community like soup kitchens, assisting the elderly, shut-ins and working with young people to build a support network for each other. Organizations that are focused on, in whole or in part, the racial disparities in the criminal punishment system must develop youth wings that give voice to the youth in developing strategies to throw off oppression and be in the driver's seat in the life of the black community locally and nationally. Essential to youth involvement is having those who create rebellious songs involved, thereby allowing their rebellious commentary to become an essential part of transforming subordination and alienation to minimize, if not eliminate, racial disparities in the criminal punishment system. These artists can become our voices in song and incorporate their commentary into acts of rebellion. Tupac Shakur, Bob Marley and Fela Kuti created such music during their lives; artists like Talib Kweli, Mos Def, Queen Latifah, and Public Enemy have done so as well..

Conclusion

This article began by suggesting that four questions determined whether the criminal punishment system in the United States was a system of subordination of African Americans, leading to the maintenance of White Supremacy. The answer to each question is clear and unequivocal. The criminal punishment system does:

- continue subordination;
- exacerbate the conditions caused by subordination;
- sustain itself and its role based on subordination and negation of human value; and,
- avoid addressing the role it plays in maintaining the racial hierarchy because it would challenge the fundamental foundation of the United States, requiring excavation and rebuilding.

“...[U]nless we remove injustice at the roots, the weeds of alienation and fragmentation will return and choke the hope for reconciliation.”²¹⁴

If there is any chance for meaningful racial reconciliation in the United States, the dignity of all people must be respected and white supremacy eliminated. The criminal punishment system in the United States must be transformed into a criminal justice system, one that values all humanity and therefore addresses punishment for crimes in a way that builds and sustains the accused, the accuser, the victim and the families and communities of both accused and victim. Otherwise there is no reconciliation; there is only the acquiescence to white domination through internal racial group violence among the most oppressed, or withdrawal from society through drugs, mental disorders, ritual, or assimilation.

Racial reconciliation comes with a cost to those who have reaped the benefits of forced anti-competitiveness²¹⁵ that began in the early 1600s when the first white settlers came to the shores of what is now the United States of America. Although many were outcasts from their native Britain, they came with the internalized view found in the European empires of old: they would “enforce and maintain domination on subject peoples through military might, economic oppression, and ideological belief systems.”²¹⁶ The subordination of African peoples was a necessary ingredient in the creation of the United States Empire. That subordination continues, despite legal enactments, from the passage of the 13th Amendment to the passage of the Civil Rights Acts of 1964 and 1965. That subordination is embedded in the infrastructure of the United States, maintaining White Supremacy, despite language to the contrary. There must be a commitment to “radical reconciliation” as described by Boesak and DeYoung, rather than the often urged reconciliation that softens the sacrifice the beneficiaries of White Supremacy must make, and, that is in fact an accommodation to White Supremacy.²¹⁷

If we are to end racial disparities in the criminal punishment system, we must end the racial subordination that is at its root. To do that, rebellion is necessary, since the beneficiaries of and upholders of White Supremacy have shown their unwillingness to engage in radical reconciliation, preferring to create an illusion of equality, without doing the essential work to manifest that equality. Although not beneficiaries of White Supremacy, many people of color and the poor have been the allies of White Supremacy, consciously or unconsciously. So many have drunk the juice that says to be black is a curse. They

begin to suffer from not being a white man [sic] to the degree that the white man [sic] imposes discrimination on [us], makes [us] a colonized [people], robs [us] of all worth, all individuality [group identity], tells [us] that [we are] parasite[s] on the world, that [we] must bring [ourselves] as quickly as possible into step with the white world . . . Then [we] will quite simply try to make [ourselves] white; that is, will compel the white man to acknowledge that [we are] human.²¹⁸

Rebellion, if it is successful, will lead to radical reconciliation and lift the burden of racial subordination that manifests in racial disparities in the criminal punishment system. If it is not successful, it will at least have changed the focus of those who engage in it from one of despair and resignation to one that claims the dignity that rightfully belongs to all people.

NOTES)

1. ANGELA Y. DAVIS, *ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE 26* (2005) [hereinafter DAVIS, *ABOLITION DEMOCRACY*].
2. See RONALD W. WALTERS, *THE PRICE OF RACIAL RECONCILIATION* (2008); ALLAN AUBREY BOESAK & CURTISS PAUL DEYOUNG, *RADICAL RECONCILIATION: BEYOND POLITICAL PIETISM AND CHRISTIAN QUIETISM* (2012); DEBORAH ZUBOW, *TRUTH & RECONCILIATION, CAN IT WORK IN THE UNITED STATES?: A REPORT FROM THE WOMEN’S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM* (1997).
3. I refer to what is commonly called the criminal justice system as the criminal punishment system, as it punishes but falls short of being just.
4. BOESAK & DEYOUNG, *supra* note 2, at ix (quoting Archbishop Desmond Tutu).
5. The Special Litigation Section of the Department of Justice, Civil Rights Division is responsible for protecting the rights of the institutionalized. In 1978, its caseload included prisons, mental health and mental retardation facilities, and nursing homes. Prisons made up a majority of the Division’s caseload.
6. Black men make up 54 percent of death row inmates. See *Death Row*, ARKANSAS DEPARTMENT OF CORRECTION, <http://adc.arkansas.gov/inmates/Pages/deathRow.aspx> (last updated Sept. 17, 2014). , and 43.8 percent of those incarcerated in the custody of the Arkansas Department of Corrections are black. See *Annual Report Final*, ARKANSAS DEPARTMENT OF CORRECTION, http://adc.arkansas.gov/resources/Documents/2012_Annual_Report_final.pdf adc.arkansas.gov/.../Documents/2012_Annual_Report_final.pdf (last visited Feb. 18, 2015). Black men are approximately 7.3 percent of the Arkansas population. <https://suburbanstats.org/population/how-many-people-live-in-arkansas> (last visited Feb. 24, 2015).
7. PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR 4* (1991).
8. *Id.* My medicine for the despair over what appears to me to be racial genocide via the intransigence of racial disparities in the punishment system and the seeming impossibility of putting the criminal punishment system on its feet is re-energizing myself by listening to liberation music by groups, such as Sweet Honey in the Rock, and by continuing my activism based in theory, but activism nonetheless.
9. RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION 173* (2d ed. 2012).
10. See *McCleskey v. Kemp*, 481 U.S. 279, 314-15 n.52 (1987) (The majority indicated that to correct the purported racial discrimination would indict the entire criminal punishment system.).
11. Convention on Prevention and Punishment of Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter *Genocide Convention*]. This was ratified by the United States Senate and signed by President Reagan on November 5, 1988. Jason Marque Sole suggests that “[t]he War on Drugs has had a genocidal effect. Before this war, our U.S. prison population was around 300,000. Today, our prison population is above 2.3 million and is rapidly rising; the majority of offenders are locked up for non-violent offenses—many of them for drug offenses. Before this war, African American men were beginning to close the racial wage gap and benefit from a rising economy—it appeared that the ‘American Dream’ was

- beginning to include them.” Jason Marque Sole, *The War on Drugs*, COUNCIL ON CRIME AND JUSTICE, <http://www.crimeandjustice.org/councilinfo.cfm?plD=50> (last visited Feb. 4, 2015).
12. Professor Angela Mae Kupenda, Mississippi College of Law, used the term “hollowing out” in commenting on my draft introduction in the Works in Progress session at the 2013 LATCRIT conference in Chicago, IL. She was referring to the process this article discusses of alienation and subordination—the gutting of identity of African peoples either leaving them empty or requiring them to fill this hollowness with an identity that is foreign to them through the process of assimilation.
 13. See generally VELMA MAIA THOMAS, *LEST WE FORGET: THE PASSAGE FROM AFRICA TO SLAVERY TO EMANCIPATION* (1997) [hereinafter THOMAS, *LEST WE FORGET*]. See also, HERBERT APTHEKER, *AMERICAN NEGRO SLAVE REVOLTS* 139 (Int'l Publishers Co., Inc. 2d ed. 1978) (1943) (discussing the social system of slavery and “the degradation, exploitation, oppression, and brutality which it created, and with which, indeed, it was synonymous”).
 14. See MANNING MARABLE, *THE GREAT WELLS OF DEMOCRACY: THE MEANING OF RACE IN AMERICAN LIFE* 2-64 (2002). Manning Marable describes structural racism as racial inequalities that are embedded in foundational and essential structures of the United States, including the criminal punishment system.
 15. There are scientists and scholars who challenge the view that race is a biological fact; rather, positing it is a social construct. See JOSEPH L. GRAVES, JR., *THE RACE MYTH: WHY WE PRETEND RACE EXISTS IN AMERICA* (2004); see also MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* (1994). Cf. World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Aug. 31-Sept. 8, 2001, *World Conference Against Racism*, ¶ 7, U.N. Doc. A/CONF.189/12 (Sept. 8, 2001) (“We declare that all human beings are born free, equal in dignity and rights and have the potential to contribute constructively to the development and well-being of their societies. Any doctrine of racial superiority is scientifically false, morally condemnable, socially unjust and dangerous, and must be rejected along with theories which attempt to determine the existence of separate human races.”).
 16. See generally IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (2006).
 17. It, therefore, is a process of genocide as defined by the United Nations Genocide Convention—by destroying black people in whole or in part—and thus a violation of that convention that was ratified by the Senate and signed by President Reagan in 1988. See Genocide Convention, *supra* note 11.
 18. See ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 27-28, 85-86 (2003); DAVIS, *ABOLITION DEMOCRACY*, *supra* note 1, at 32, 70.
 19. See EMILE DURKHEIM, *Anomie and the Moral Structure of Industry*, in EMILE DURKHEIM: *SELECTED WRITINGS* 173, 173-88 (Anthony Giddens ed., 1972) [hereinafter DURKHEIM]; see also ROBERT M. BOHM & BRENDA L. VOGEL, *A PRIMER ON CRIME AND DELINQUENCY THEORY* 70 (3d ed. 2011).
 20. See Robert K. Merton, *Social Structure and Anomie*, 3 AM. SOCIOLOGICAL REV. 672 (1938).
 21. *Id.* at 674.
 22. SCOTT MIRE & CLIFF ROBERSON, *THE STUDY OF VIOLENT CRIME: ITS CORRELATES AND CONCERNS* 62 (2011).
 23. See Malcolm X, *The Ballot or the Bullet* (Apr. 3, 1964). This “nightmare” is in large part due to the structural barriers created to prevent black people from attaining the “American Dream,” something Merton did not consider. See MIRE & ROBERSON, *supra* note 22, at 62 (indicating Merton based his views on a theory of egalitarianism—that all people have an equal chance of achieving wealth legitimately). See also KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME AND THE MAKING OF MODERN URBAN AMERICA* (2010) (The author provides an analysis of how the treatment of blacks in society, generally, and within the criminal punishment system specifically, stigmatized black people as a group

and thus led to disproportionate representation in the punishment system. “[A]t the very moment when a wide array of public policies was providing most white Americans with valuable tools to advance their social welfare—insure their old age, get good jobs, acquire economic security, build assets, and gain middle-class status—most black Americans were left behind or left out.” *Id.* at 13 (citations omitted).

24. See R. Thomas Dull, *An Empirical Examination of the Anomie Theory of Drug Use*, 93 J. DRUG EDUC. 49, 49 (1983); ERNEST MANDEL & GEORGE NOVAK, *THE MARXIST THEORY OF ALIENATION* 6 (1973); J. Beth Mabry & K. Jill Kiecoit, *Anger in Black and White: Race, Alienation and Anger*, 46 J. HEALTH AND SOC. BEHAVIOR 85, 85, 87 (2005); Wendell Bell, *Anomie, Social Isolation, and the Class Structure*, 20 SOCIOLOGY 105, 105 (1957) (anomie characterized by personal demoralization); Hayden P. Smith & Robert Bohm, *Beyond Anomie: Alienation and Crime*, 16 CRIT. CRIM. 1, 1 (2008); Michael Dehaven Newsom, *Clarence Thomas, Victim? Perhaps, and Victimizer? Yes—A Study in Social and Racial Alienation from African-Americans*, 48 ST. LOUIS U. L. J. 327, 328 (2003); ROBERT J. FRANZESE, *THE SOCIOLOGY OF DEVIANCE: DIFFERENCES, TRADITIONS, AND STIGMA* 34 (2009); James E. Twining, *Alienation as a Social Process*, 21 THE SOCIOLOGICAL QUARTERLY 417, 417 (1980); Nancy Stein, *Elijah Anderson’s “The Code of the Streets”* 3, available at www.criminology.fsu.edu/crimtheory/anderson.htm (last visited July 29, 2013);
25. See, e.g., MANDEL & NOVAK, *supra* note 24, at 6; Mary Hanemann Lystad, *Social Alienation: A Review of Current Literature*, 13 THE SOCIOLOGICAL QUARTERLY 90, 90 (1972).
26. See MANDEL & NOVAK, *supra* note 24, at 7; DURKHEIM, *supra* note 19, at 180-81.
27. See, e.g., Smith & Bohm, *supra* note 24, at 2-4.
28. FRANTZ FANON, *THE WRETCHED OF THE EARTH* 49 (Richard Philcox trans., Grove Press 2004) (1968).
29. See, e.g., DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992).
30. See generally DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME* (2008); A. LEON HIGGINBOTHAM, *IN THE MATTER OF COLOR* (1978) [hereinafter HIGGINBOTHAM, *MATTER OF COLOR*]; MICHAEL TONRY, *MALIGN NEGLECT: RACE, CRIME AND PUNISHMENT IN AMERICA* (1995).
31. See Genocide Convention, *supra* note 11.
32. Cf. LU-IN WANG, *DISCRIMINATION BY DEFAULT: HOW RACISM BECOMES ROUTINE* 12-13 (2006) (citations omitted) (The advantages of being white were obtained through “deliberately anticompetitive conduct,” thus creating the gap between whites and people of color.).
33. Roy L. Brooks, *Critical Race Theory: A Proposed Structure and Application to Federal Pleading*, 11 HARV. BLACKLETTER L.J. 85, 88 (1994).
34. DELGADO & STEFANCIC, *supra* note 9, at 173.
35. It is important to note that this process is used, to a greater or lesser extent, on all people of color in the United States.
36. Derrick Bell, *White Superiority in America: Its Legal Legacy, Its Economic Costs*, in *THE DERRICK BELL READER* 27 (Richard Delgado & Jean Stefancic eds., 2005).
37. See *id.* at 31 (creation of “impossible-to-hurdle intent barriers to deny blacks remedies for racial injustices where the relief sought would either undermine white expectations and advantages gained during years of overt discrimination, or expose the deeply embedded racism in a major institution such as the criminal justice system.”). Charles Lawrence in his seminal article, “The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism,” centers his argument for recognition of unconscious racism in *Washington v. Davis*, 426 U.S. 229 (1976) and the Supreme Court’s establishment of what Bell called a virtually “impossible-to-hurdle intent barrier.” Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 318-22 (1987). Likewise, the Supreme Court’s decision in *McCleskey v. Kemp*, 481 U.S. 279 (1987) is an example of Bell’s point that white supremacy is upheld by *denial of a remedy to the*

- plaintiffs because the remedy* (the finding of racial discrimination in Georgia's imposition of the death penalty) would have exposed "the deeply embedded racism in . . . the criminal justice system." See *McCleskey*, 481 U.S. at 314-15. If the Supreme Court adopted an anti-subordination perspective on issues involving claims of racial bias there would be no need for a focus on whether this specific person was the victim of intentional bias. Rather, the focus would be on the system and whether a government policy or practice "was the primary threat to equality" resulting in a disadvantage that significantly contributed to the plaintiff's claim. Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1453-54 (1991). See also Randall L. Kennedy, *McCleskey v. Kemp: Race, Capital Punishment, and the Supreme Court*, 101 HARV. L. REV. 1388, 1424 (1988) ("The antisubordination perspective on equal protection is preferable because it better addresses both the great historic wrong that gave rise to the Reconstruction amendments and the great contemporary injustice that, more than any other, continues to plague the American legal order: the racial subordination of the Negro").
38. See FANON, *supra* note 28, at 18, 52, 305 (the subordinated turn on own group, not that of the subordinator). See also ELIJAH ANDERSON, *THE CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY* (1999).
 39. APTHEKER, *supra* note 13, at 2.
 40. *Id.*
 41. *Id.* at 4 (discussing "the lie of apologists for racism that enslaved Africans were 'reduced to the station of children, . . . tranquilized, totally defenseless . . .'" (citations omitted))
 42. Subordination is not just a "southern thing" and is part and parcel of how the colonies and the United States overtly dealt with people of color/black people from the early 1600s until the mid-1960s and how they continue to be dealt with today.
 43. Although slavery in the "New World" began in 1517, it was not until 1619 that the first twenty Africans came to Jamestown, Virginia. See JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., *FROM FREEDOM TO SLAVERY: A HISTORY OF AFRICAN AMERICANS* 40, 65 (2000) (Spain permitted importation of enslaved Africans to the New World, beginning the trading of humans in that world. Twenty Africans "were put ashore at Jamestown in 1619 . . ."); A. LEON HIGGINBOTHAM, JR., *SHADES OF FREEDOM: RACIAL POLITICS AND PRESUMPTIONS OF THE AMERICAN LEGAL PROCESS* 18, 29-30 (1996) [hereinafter HIGGINBOTHAM, *SHADES OF FREEDOM*] (Slavery began in Virginia in 1619; however, it was not codified until 1662.).
 44. The Thirteenth Amendment to the United States Constitution "freed" all those enslaved; whereas, Lincoln's Emancipation Proclamation "freed" only those enslaved in states that seceded from the Union.
 45. THOMAS, *LEST WE FORGET*, *supra* note 13, at 5.
 46. THOMAS, *LEST WE FORGET*, *supra* note 13.
 47. SOLOMON NORTHRUP, *TWELVE YEARS A SLAVE* (Derby& Miller 2008) (1853).
 48. FRANKLIN & MOSS, *supra* note 43.
 49. HARRIETT BEECHER STOWE, *UNCLE TOM'S CABIN* (1852).
 50. HIGGINBOTHAM, *MATTER OF COLOR*, *supra* note 30.
 51. HIGGINBOTHAM, *SHADES OF FREEDOM*, *supra* note 43.
 52. THOMAS, *LEST WE FORGET*, *supra* note 13, at 5.
 53. See THOMAS, *LEST WE FORGET*, *supra* note 13, at 6. See also TOM FEELINGS, *THE MIDDLE PASSAGE: WHITE SHIPS, BLACK CARGO* (1997).
 54. See THOMAS, *LEST WE FORGET*, *supra* note 13, at 6 (The one exception was The Amistad.).
 55. There are various estimates for the number of Africans forced into slavery and transported to the New World. See FRANKLIN & MOSS, *supra* note 43, at 47, 48 (Franklin and Moss indicate "it is not possible to give an accurate figure of the number of slaves imported into the New World from Africa" as they provide a number of estimates for the 15th, 16th, 17th, 18th and 19th centuries from different sources ranging from a total of 14,650,000 to 9,566,100 for all five centuries.). See also RONALD SEGAL, *THE BLACK DIASPORA: FIVE*

CENTURIES OF THE BLACK EXPERIENCE OUTSIDE AFRICA 4 (1995) (indicating that almost 12,000,000 Africans were transported on ships across the Atlantic); THE ATLANTIC SLAVE TRADE 95 (David Northrup ed., 2d ed. 2002) (suggesting a higher figure of 12,500,00 and indicating that the number of Africans purchased by “traders” was significantly higher); Steven Mintz, Facts about the Slave Trade and Slavery, THE GILDER LEHRMAN INSTITUTE OF AMERICAN HISTORY, <http://www.gilderlehrman.org/history-by-era/slavery-and-anti-slavery/resources/facts-about-slave-trade-and-slavery> (last visited on Oct, 12, 2014)) (Approximately 500,000 Africans were brought to what is now the United States between 1619 and 1870.); FRANKLIN & MOSS, *supra* note 43, at 139 (The population of enslaved Africans grew from this 500,000 imported from Africa to almost 4,000,000 by the last census before the Civil War.).

56. See APTHEKER, *supra* note 13, at 50 (restricting religious gatherings); FRANKLIN & MOSS, *supra* note 44, at 153-54 (enslaved Africans required to go to white churches as a form of surveillance of their activities); FRANKLIN & MOSS, *supra* note 43, at 72, 155 (violation of law to teach enslaved to read or write); THOMAS, LEST WE FORGET, *supra* note 13, at 17 (given “new name”); Ira Berlin, *African Immigration to Colonial America*, THE GILDER LEHRMAN INSTITUTE OF AMERICAN HISTORY, <http://www.gilderlehrman.org/history-now/essays/african-immigration-colonial-america> (last visited Oct. 12, 2014) (The general thrust of the slave trade was toward heterogeneity, throwing different people together in ways that undermined the transfer of any single culture.).
57. THOMAS, LEST WE FORGET, *supra* note 13, at 10.
58. See APTHEKER, *supra* note 13, at 53, 60.
59. KENNETH STAMPP, THE PECULIAR INSTITUTION 149-150 (1984).
60. See David Menschel, *Abolition Without Deliverance: The Law of Connecticut 1784-1848*, 111 YALE L.J. 183 (2001).
61. Delaware, Missouri and Kentucky were the only non-southern slave states.
62. See, e.g., APTHEKER, *supra* note 13, at 130-31 (“For to keep human beings [in the conditions of slavery], physical repression—cruelty in its usual sense- was often necessary, so often indeed that one is correct . . . in declaring that cruelty was characterization of the institution of American Negro slavery Many, perhaps most, writers on this subject have denied this and assert, on the contrary, that ‘kindliness [was] the rule’ under the system. [Because] . . . ‘owners of slaves were hardly likely to be cruel or careless with expensive pieces of their own property’ When one takes into consideration the estimate of the Negro that is characteristic of most if not all writers of this type of thinking, [comparing to treatment of horses or automobiles] the particular sleight of hand in this legerdemain becomes more comprehensible.”). See generally FRANKLIN & MOSS, *supra* note 43, at 138-66.
63. See APTHEKER, *supra* note 13, at 82 (extracting teeth, setting dogs on enslaved Africans to tear them to pieces). Indeed, my great-great-great grandparents were enslaved as a family in Missouri. Their daughter, Belle Jones, was “given” to a United States Naval officer, Haskell, who visited the “master.” She became impregnated with my great grandfather, Antonio Haskell (Poppa). She was sold “down the Mississippi” to New Orleans, notoriously one of the worst places for enslaved Africans, after a confrontation with the so-called “master,” leaving Poppa to be cared for by his grandparents.
64. See HIGGINBOTHAM, MATTER OF COLOR, *supra* note 30, at 26-30.
65. See U.S. CONST. amend. XIII: Section 1
 Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or anyplace subject to their jurisdiction.
 Section 2
 Congress shall have power to enforce this article by appropriate legislation.
66. The Emancipation Proclamation was signed by President Lincoln on September 22, 1862, taking effect on January 1, 1863. See THOMAS, LEST WE FORGET, *supra* note 13, at 26 (with

- no land, food or clothing, many were forced to stay on the plantations); FRANKLIN & MOSS, *supra* note 43, at 253-56 (“Blacks distressed, moreover, not only because they lacked the necessities of life but also because they genuinely feared, especially after the death of President Lincoln, that they would gradually slip back into a condition hardly better than that of slaves.”). *See also* *Sherman’s Field Order No. 15*, THE GILDER LEHRMAN INSTITUTE OF AMERICAN HISTORY, <http://www.gilderlehrman.org/history-by-era/african-americans-and-emancipation/timeline-terms/sherman%E2%80%99s-field-order-no-15> (last visited Oct. 12, 2014) (Union General William T. Sherman issued Field Order No. 15 on January 16, 1865, making 400,000 acres of land confiscated from slaveholders in Georgia, South Carolina and Florida available to enslaved Africans, ostensibly those freed by the Emancipation Proclamation and those to be freed by the Thirteenth Amendment. This order was vacated by President Andrew Johnson in March 1865.) In this regard, emancipated Africans were treated worse than prisoners released from prisons in the United States. States provide for some amount of money for those released as does the federal government, requiring by statute that released prisoners be provided suitable clothing, up to \$500 and transportation. *See* 18 U.S.C. § 3624.
67. *See* W. E. Burghardt Du Bois, *The Freedmen’s Bureau*, 87 ATLANTIC MONTHLY 354 (1901), available at <http://www.theatlantic.com/past/docs/issues/01mar/dubois.htm>.
 68. *See id.*; *see also* FRANKLIN & MOSS, *supra* note 43, at 255-57.
 69. *See* Du Bois, *supra* note 67; FRANKLIN & MOSS, *supra* note 43, at 255-57.
 70. *See* *Sherman’s Field Order No. 15*, *supra* note 66.
 71. *See* World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Aug. 31-Sept. 8, 2001, *World Conference Against Racism*, ¶ 7, U.N. Doc. A/CONF.189/12 (Sept. 8, 2001) (“We acknowledge that slavery and the slave trade, including the transatlantic slave trade, were appalling tragedies in the history of humanity not only because of their abhorrent barbarism but also in terms of their magnitude, organized nature and especially their negation of the essence of the victims, and further acknowledge that slavery and the slave trade are a crime against humanity and should always have been so, especially the transatlantic slave trade”); Frederick Douglass, *The Hypocrisy of American Slavery* (July 5, 1852) (“ . . . [T]he hypocrisy of the nation must be exposed; and its crimes against God and man must be denounced.”).
 72. *See* VELMA MAIA THOMAS, FREEDOM’S CHILDREN: THE PASSAGE FROM EMANCIPATION TO THE GREAT MIGRATION 3 (2000) [hereinafter THOMAS, FREEDOM’S CHILDREN].
 73. *See* W. E. Burghardt Du Bois, *Lynching*, http://tdl.org/txlor-dspace/bitstream/handle/2249.3/206/08_lynch.htm?sequence=5 (last visited Oct. 22, 2014).
 74. *See* DOUGLAS A. BLACKMON, SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II (2008).
 75. *See* FRANKLIN & MOSS, *supra* note 43, at 127-37.
 76. *See* Ida B. Wells, *Lynch Law* (1893), available at <http://www.historyisaweapon.com/defcon1/wellslynchlaw.html> (“He is now charged with assaulting or attempting to assault white women. This charge, as false as it is foul, robs us of the sympathy of the world The world affects to believe that white womanhood and childhood, surrounded by their law protectors, are not safe in the neighborhood of the black man”). It is clear the lynch mobs were not upholding the honor of “womanhood” in general since black womanhood was devalued; black women being fair victims for rape by white men. *Id.* (“The same crime committed by . . . white men against black women is ignored even in the law courts.” *Id.*)
 77. *See* FRANKLIN & MOSS, *supra* note 43, at 250-51; BLACKMON, *supra* note 74, at 5-9.
 78. *See* BLACKMON, *supra* note 74, at 5-9.
 79. *Id.*
 80. *See* *Convict Lease System*, DIGITAL HISTORY http://www.digitalhistory.uh.edu/disp_textbook_print.cfm?smtid=2&psid=3179 (last visited Feb. 5, 2015) (Began in 1846 in Alabama and ended July 1, 1928); BLACKMON, *supra* note 74, at 369.

81. See S. Res. 39, 109th Cong. (2005); Avis Thomas-Lester, *A Senate Apology for History on Lynching*, WASH. POST (June 14, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/13/AR2005061301720.html>.
82. See generally: GLORIA J. BROWNE-MARSHALL, RACE, LAW, AND AMERICAN SOCIETY: 1607—PRESENT (2007); WANG, *supra* note 32; MARABLE, *supra* note 14.
83. See *Plessy v. Ferguson*, 163 U.S. 537 (1896) (upheld the doctrine of separate but equal); *but see* *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) (held that separate is inherently unequal).
84. See FRANKLIN & MOSS, *supra* note 43, at 250-51; BLACKMON, *supra* note 74, at 5-9.
85. See ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS* 8 (2010).
86. See *The Punishing Decade: Prison and Jail Estimates at the Millennium*, JUSTICE POLICY INST. 2 (May 2000), http://www.justicepolicy.org/images/upload/00-05_rep_punishing-decade_ac.pdf. (The prison population jumped from 11,665 in the decade 1900-1910 and 13,224 in 1910-1920 to 47,494 in the decade 1920-1930.). See Christopher Muller, *Northward Migration and the Rise of Racial Disparity in American Incarceration: 1880-1950*, 118 AM. J. SOCIOLOGY 281 (2012).
87. See Adjoa Artis Aiyetoro, *Truth Matters: A Call for the American Bar Association to Acknowledge Its Past and Make Reparations to African Americans*, 18 GEO. MASON U. C.R. L.J. 51, 72 (2007).
88. See Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986); see also Nkechi Taifa, *The “Crack/Powder” Disparity: Can the International Race Convention Provide a Basis for Relief?*, AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY 1 (2006), available at https://www.acslaw.org/sites/default/files/Taifa_-_Crack_Powder_Disparity.pdf.
89. See BROWNE-MARSHALL, *supra* note 82, at 131.
90. *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).
91. *Politics: Senator Rand Paul: Mandatory Minimum Sentencing Laws Target Racial Minorities* (WFPL News radio broadcast Sept. 18, 2013), available at <http://wfpl.org/post/senator-rand-paul-mandatory-minimum-sentencing-laws-target-racial-minorities>.
92. See THOMAS, FREEDOM’S CHILDREN, *supra* note 72, at 3 (quoting Frederick Douglass, “What good was our emancipation? When you turned us loose, you gave us no acres. You turned us loose to the sky, to the storm, to the whirlwind, and worst of all, you turned us loose to the wrath of our infuriated masters.” (citation omitted)); MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 1 (2010).
93. See R. Thomas Dull, *An Empirical Examination of the Anomie Theory of Drug Use*, 93 J. DRUG EDUC. 49, 49 (1983); MANDEL & NOVAK, *supra* note 24, at 6; J. Beth Mabry & K. Jill Kiecoit, *Anger in Black and White: Race, Alienation and Anger*, 46 J. HEALTH AND SOC. BEHAVIOR 85, 85, 87 (2005); Wendell Bell, *Anomie, Social Isolation, and the Class Structure*, 20 SOCIOLOGY 105, 105 (1957) (anomie characterized by personal demoralization); Smith & Bohm, *supra* note 24, at 1; Michael Dehaven Newsom, *Clarence Thomas, Victim? Perhaps, and Victimizer? Yes—A Study in Social and Racial Alienation from African-Americans*, 48 ST. LOUIS U. L. J. 327, 328 (2003); FRANZESE, *supra* note 24, at 34; James E. Twining, *Alienation as a Social Process*, 21 THE SOCIOLOGICAL QUARTERLY 417, 417 (1980); Nancy Stein, *Elijah Anderson’s “The Code of the Streets”* 3, available at www.criminology.fsu.edu/crimtheory/anderson.htm (last visited July 29, 2013); Mary Hanemann Lystad, *Social Alienation: A Review of Current Literature*, 13 THE SOCIOLOGICAL QUARTERLY 90, 90 (1972). *But see* Gabriel A. Acevedo, *Turning Anomie on Its Head: Fatalism as Durkheim’s Concealed and Multidimensional Theory*, 23 SOCIOLOGICAL THEORY 75, 77 (2005) (arguing that it is not anomie that is aligned with Marx’s theory of alienation but rather Durkheim’s underdeveloped theory of fatalism).
94. See Wendell Bell, *Anomie, Social Isolation, and the Class Structure*, 20 SOCIOLOGY 105, 106 (1957); Smith & Bohm, *supra* note 24, at 3, 10-11; FRANZESE, *supra* note 24, at 44; R.

- Thomas Dull, *An Empirical Examination of the Anomie Theory of Drug Use*, 93 J. DRUG EDUC. 49, 58 (1983) (discussing that there is no correlation between anomie, race, and drug use); Frederick J. Desroches, *Anomie: Two Theories of Prison Riots*, 25 CANADIAN J. CRIM. 173, 177 (1983) (studying anomie and prisoners); BOHM & VOGEL, *supra* note 19, at 82-83; Mary Hanemann Lystad, *Social Alienation: A Review of Current Literature*, 13 SOCIOLOGICAL QUARTERLY 90, 94-95, 99 (1972); Karlyn J. Geis & Catherine E. Ross, *A New Look at Urban Alienation: The Effect of Neighborhood Disorder on Perceived Powerless*, 61 SOCIAL PSYCHOLOGY QUARTERLY 232, 232, 234, 238 (1998); Kent B. Germany, “*They Can Be Like Other People*”: *Race, Poverty and the Politics of Alienation in New Orleans’s Early Great Society*, in *THE NEW DEAL AND BEYOND: SOCIAL WELFARE IN THE SOUTH SINCE 1930* 163, 165-68 (Elna C. Green ed., 2003).
95. See Smith & Bohm, *supra* note 24, at 3, 6.
 96. See *id.* at 8 (citation omitted).
 97. Some sociologists discuss racial oppression as a form of “objective alienation.” See *id.* at 9.
 98. See, e.g., WILBERT RIDEAU, *IN THE PLACE OF JUSTICE: A STORY OF PUNISHMENT AND DELIVERANCE* (2011) (An autobiography of an award winning journalist who was convicted of murder in Louisiana and sentenced to death.)
 99. See FRANZESE, *supra* note 24, at 35-36.
 100. See FRANZESE, *supra* note 24, at 34-35.
 101. MIRE & ROBERSON, *supra* note 22, at 60.
 102. See FRANZESE, *supra* note 24, at 34.
 103. FRANZESE, *supra* note 24, at 34-35.
 104. DURKHEIM, *supra* note 19, at 173, 181.
 105. DURKHEIM, *supra* note 19, at 173, 181.
 106. DURKHEIM, *supra* note 19, at 173, 181.
 107. See WANG, *supra* note 32, at 12-13 (The advantages of being white were obtained through “deliberately anticompetitive conduct,” thus creating the gap between whites and people of color (citations omitted)).
 108. DURKHEIM, *supra* note 19, at 181.
 109. DURKHEIM, *supra* note 19, at 184.
 110. BOHM & VOGEL, *supra* note 19, at 70.
 111. BOHM & VOGEL, *supra* note 19, at 70.
 112. BOHM & VOGEL, *supra* note 19, at 70.
 113. MIRE & ROBERSON, *supra* note 22, at 60.
 114. See MIRE & ROBERSON, *supra* note 22, at 61.
 115. See FRANZESE, *supra* note 24, at 36.
 116. BOHM & VOGEL, *supra* note 19, at 80.
 117. See *infra* III. C. Some critical criminologists suggest that Merton avoided or dismissed the conclusion that the American Dream is not truly available to all.
 118. BOHM & VOGEL, *supra* note 19, at 80-81. There are five ways posited by Merton to adapt to anomie or strain: (1) conformity to the rules; (2) innovation, including crime; (3) ritualism; (4) retreatism, including addiction; and (5) rebellion. Robert K. Merton, *Social Structure and Anomie*, 3 AMERICAN SOCIOLOGICAL REVIEW 672, 676 (1938).
 119. FRANZESE, *supra* note 24, at 43, 44, 48, 49.
 120. *Id.* at 43-44.
 121. BOHM & VOGEL, *supra* note 19, at 84.
 122. *Id.* Of course, other blocks to obtaining the American Dream have been placed in the paths of people of color, women, the LGBTQ community, and others. As I indicated earlier,

this article focuses on the conscious and purposeful subordination of African peoples and how that subordination served to prevent access to legitimate means of achieving the American Dream.

123. See FRANZESE, *supra* note 24, at 49 (citing the 1997 study by Messner and Rosenfield on anomie and homicide rates finding that there was an inverse relationship between homicide rates and decommodification of labor—“policies that protect citizens from market forces, including entitlement programs and social security, policies often associated with the empowerment of people.” The United States had “by far the greatest rate of homicide of any of the 45 nations under study.”) See also Smith & Bohm, *supra* note 24, at 9 (“Alienation Index” is a Harris Poll survey that reveals self-reported alienation as highest in “poor people with household incomes of \$15,000 or less, African Americans, Democrats and Hispanics.”).
124. See Smith & Bohm, *supra* note 24, at 3.
125. *Id.*
126. Merton, *supra* note 20, at 676.
127. BOHM & VOGEL, *supra* note 19, at 80.
128. See FRANZESE, *supra* note 24, at 44, 46-47 (discussing Agnew’s work on anomie and the relationship of prejudice and discrimination to crime and empirical support for his theory).
129. JEFFREY REIMAN, *THE RICH GET RICHER AND THE POOR GET PRISON* (2007).
130. ANDERSON, *supra* note 38.
131. *Id.* at 323.
132. Smith & Bohm, *supra* note 24, at 6-8 (discussing Hegel, Geurbach and Marx—“social, institutional, and cultural alienation ultimately is a priori alienation from self”).
133. See ANDERSON, *supra* note 38.
134. See *id.* at 323. See also Nancy Stein, *Elijah Anderson’s “The Code of the Streets”* 3, available at www.criminology.fsu.edu/crimtheory/anderson.htm (last visited July 29, 2013).
135. Ferguson and St. Louis, MO and New York communities have engaged in protests beginning in July, August, September and October of 2014 concerning police killings of unarmed black men. These protests include an organized effort to address police violence in these communities. There has been no rebellion concerning the racial disparities in the punishment system as a whole.
136. It is revealing, however, that religion, spirituality and dance to the point of exhaustion and semi-possession are ritualistic experiences of African tradition both in the United States and Algeria—a form of release. In the preface to Fanon’s *WRETCHED OF THE EARTH*, Jean-Paul Satre summarizes the role of ritual in the life of the colonized Algerians: “Under the amused eye of the settler, they will take the greatest precautions against their own kind by setting up supernatural barriers, at times reviving old and terrible myths, at others binding themselves by scrupulous rites. It is in this way that an obsessed person flees from his deepest needs—by binding himself to certain observances which require his attention at every turn. They dance, that keeps them busy; it relaxes their painfully contracted muscles; and then the dance mimes secretly, often without their knowing, the refusal they cannot utter and the murders they dare not commit.” FANON, *supra* note 28, at 19. Fanon describes a scene involving dance that could very well have occurred in any black community in the United States: “At certain times on certain days, men and women come together at a given place, fling themselves into seemingly unorganized pantomime, which is in reality extremely systematic, in which by various means—shakes of the head, bending of the spinal column, throwing of the whole body backward—may be deciphered as in an open book the huge effort of a community to exorcise itself, to liberate itself, to explain itself.” FANON, *supra* note 28, at 57.
137. Indeed, Frantz Fanon, Herbert Aptheker and Paul Butler all seem to agree that rebellion requires physical violence on the part of those rebelling against oppressive governments.

- See FANON, *supra* note 28, at 293-308 (to liberate self from oppression requires physical conflict, which leads to reintegration of the oppressed); APTHEKER, *supra* note 13, at 3 (“The highest form of protest was rebellion or conspiracy to rebel. This is collective . . . an all-out commitment with death the sure price for failure and with success not likely.”); Paul Butler, *By Any Means Necessary: Using Violence and Subversion to Change Unjust Law*, 50 UCLA L. REV. 721, 751 (2003) (paralleling violence to quell subordination by the criminal punishment system with the rebellion of enslaved Africans—making a decision “to live or die”).
138. MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/rebellion> (last visited Feb. 5, 2015).
 139. See generally APTHEKER, *supra* note 13.
 140. See FRANKLIN & MOSS, *supra* note 43, at 523-38; *Civil Disobedience*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/119219/civil-disobedience> (last visited Oct. 19, 2014).
 141. FRANKLIN & MOSS, *supra* note 43, at 534 (assassination of Medgar Evers); Maurice J. Hobson, *But for Bull Connor and Birmingham, We Would Not Have Dr. Martin Luther King Jr.'s 'Letter from Birmingham Jail.'* AL.COM, http://www.al.com/opinion/index.ssf/2013/04/but_for_bull_connor_and_birmin.html (last visited Oct. 19, 2014); CAROLYN MCKINSTRY WITH DENISE GEORGE, *WHILE THE WORLD WATCHED: A BIRMINGHAM BOMBING SURVIVOR COMES OF AGE DURING THE CIVIL RIGHTS MOVEMENT* (2011).
 142. Merton, *supra* note 20, at 672, 674.
 143. Merton, *supra* note 20, at 675. Cf. FANON, *supra* note 28, at 39, 60.
 144. See generally BROWNE-MARSHALL, *supra* note 82; WANG, *supra* note 32; MARABLE, *supra* note 14; THOMAS SHAPIRO, *THE HIDDEN COST OF BEING AFRICAN AMERICAN: HOW WEALTH PERPETUATES INEQUALITY* (2005).
 145. See generally BROWNE-MARSHALL, *supra* note 82; WANG, *supra* note 32; MARABLE, *supra* note 14; SHAPIRO, *supra* note 144. See also FRANKLIN & MOSS, *supra* note 43.
 146. Merton, *supra* note 20, at 679.
 147. APTHEKER, *supra* note 13, at 3.
 148. FANON, *supra* note 28, at 293-309.
 149. FANON, *supra* note 28, at 293.
 150. FANON, *supra* note 28, at 296.
 151. FANON, *supra* note 28, 308-09 (providing an apt description of the anomic state).
 152. FANON, *supra* note 28, at 296 (appalling criminality under colonialism); FANON, *supra* note 29, at 304-08 (regression of criminality during revolution).
 153. FANON, *supra* note 28, at 309.
 154. FANON, *supra* note 28, at 299, 307-08.
 155. *Id.* at 306.
 156. APTHEKER, *supra* note 13, at 4.
 157. See D’ARMY BAILEY WITH ROGER EASSON, *THE EDUCATION OF A BLACK RADICAL: A SOUTHERN CIVIL RIGHTS ACTIVIST’S JOURNEY, 1959-64* (2009); FRANKLIN & MOSS, *supra* note 43, at 526; *The Sit-In Movement*, UShISTORY.ORG, <http://www.ushistory.org/us/54d.asp> (last visited Oct. 12, 2014).
 158. See FRANKLIN & MOSS, *supra* note 43, at 522-59.
 159. See FRANKLIN & MOSS, *supra* note 43, at 553; BRIAN GLICK, *WAR AT HOME: COVERT ACTION AGAINST U.S. ACTIVISTS AND WHAT WE CAN DO ABOUT IT* (1989); G. Flint Taylor, *The FBI COINTELPRO Program and the Fred Hampton Assassination*, THE HUFFINGTON POST (Dec. 3, 2013, 10:40 AM), http://www.huffingtonpost.com/g-flint-taylor/the-fbi-cointelpro-progra_b_4375527.html (discussing the assassination of Black Panther leader, Fred Hampton).

160. APTHEKER, *supra* note 13, at 3.
161. See *id.* at 67-69 (The United States and any state in which an armed rebellion would be launched has advanced military forces and machinery, armed federal and state police and other instruments to quell a rebellion in fairly short order. The power is far more extensive than during slavery when the responses to the revolts of the enslaved were swift and violent.). See also Algerian National Liberation (1954-1962), GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/world/war/algeria.htm> (last modified July 11, 2011) (In Algeria, the French were fighting on foreign land, taken by force through colonialism, and the National Liberation Front (FLN) and its military arm, the National Liberation Army (ALN) were sufficiently armed to be victorious.).
162. See APTHEKER, *supra* note 13, at 31-32, 85. During slavery, Mexico and Spain were sympathetic with, and in some sense, allies of the enslaved. Britain manipulated enslaved Africans into believing they would free them if they assisted them in a battle during the Revolutionary War. The British armed the enslaved Africans. The British were successful, did not free those enslaved who fought with them, and had difficulty disarming the Africans and “reduc[ing] them to their proper obedience and position.” APTHEKER, *supra* note 13, at 89.
163. See APTHEKER, *supra* note 13, at 13, 80, 82, 84-85 (reprisals for slave revolts); BLACK LIBERATION ARMY, MESSAGE TO THE BLACK MOVEMENT: A POLITICAL STATEMENT FROM THE BLACK UNDERGROUND (1976), available at <http://archive.lib.msu.edu/AFS/dmc/radicalism/public/all/messageblackmovement/AAL.pdf>; *Terror Behind Bars: A Short History of the Black Liberation Army*, SANTA BARBARA NEWS-PRESS, <http://www.newspress.com/terrorbehindbars/history.htm> (last visited Oct. 19, 2014).
164. See APTHEKER, *supra* note 13, at 80. After each slave rebellion, whites responded with increased violence against those implicated in the insurrection through lashings, cutting off appendages and hangings. They also increased repressive rules and laws, further restricting the movement of enslaved Africans. See *id.* at 50, 75.
165. See *id.* at 92 (Most slave rebellions were discovered through Africans, free or enslaved, betraying the conspiracy to rebel. For example, in 1814, a free African betrayed a conspiracy to rebel in Fredericktown, Maryland.). See also *id.* at 62-63 (Owners traditionally engaged in divide and conquer among the enslaved. They made those enslaved Africans who worked in the homes believe they were better than those who worked in the field and thus encouraging the “domestic slave” to identify their interests with those of the owner. This resulted at times in the “domestic slave” informing on those planning rebellions.); FANON, *supra* note 28, at 7 (Similarly, under colonialism, the Europeans “manufactured a native elite,” often “brainwashing hand-picked adolescents.”).
166. See FANON, *supra* note 28 at 10-12, 46, 49, 60; see also APTHEKER, *supra* note 13, at 62.
167. See Roy L. Brooks & Mary Jo Newborn, *Critical Race Theory and Classical-Liberal Civil Rights Scholarship: A Distinction without a Difference?* 82 CAL. L. REV. 787, 802 (1994).
168. See FANON, *supra* note 28, at 12 (embracing cult of Western culture and withdrawal into the twilight of African culture); *id.* at 46 (“implanted deeply into the minds of the colonized intellectual that the essential qualities . . . of the West . . . remain eternal in spite of all the blunders men may make”); *id.* at 49 (“In order to assimilate and to experience the oppressor’s culture, the native has had to leave certain of his intellectual possession in pawn”); and *id.* at 60 (The native intellectual has clothed his aggressiveness in his veiled desire to assimilate himself to the colonial world. . . . What they demand is not the settler’s position of status, but the settler’s place.); APTHEKER, *supra* note 13, at 54-55 (mulatto girl reminded through cutting off her hair that she was not white); *id.* at 92 (enslaved Africans planning rebellion betrayed by a “free” Negro); Germany, *supra* note 94, at 163 (The central theme of the Great Society was a desire to make poor people— especially African American poor—more like other people.). Cf. Tukulufu Zuberi, *Critical Race Theory of Society*, 43 CONN. L. REV. 1573, 1580 (2011) (W.E.B. DuBois was a “leading challenger of the views of assimilationists and a leading figure in the rise of the African-centered perspective.”).

169. See *Black Businessman Fights Affirmative Action*, NBC NEWS, [http://www.nbcnews.com/id/27023045/ns/us_news-life/t/black-businessman-fights-affirmative-action/%23.VDr28PldVqUSee%20\(accessed#.VNUVN0uDh0A](http://www.nbcnews.com/id/27023045/ns/us_news-life/t/black-businessman-fights-affirmative-action/%23.VDr28PldVqUSee%20(accessed#.VNUVN0uDh0A) (last updated Oct. 5, 2008, 5:42 AM); Luke Johnson, *Clarence Thomas Compares Affirmative Action to Slavery, Segregation in Opinion*, THE HUFFINGTON POST (June 24, 2013 2:31 PM), http://www.huffingtonpost.com/2013/06/24/clarence-thomas-affirmative-action_n_3491433.html. Cf. WANG, *supra* note 32, at 12-13 (2006) (The advantages of being white were obtained through “deliberately anticompetitive conduct” thus creating the gap between whites and people of color. (citations omitted)). I am also wary of positions taken by black legal scholars, such as Randall Kennedy, that often belie the actual condition of black people. For example, Professor Kennedy was highly critical of the assertion by critical race theorists that white scholars often fail to cite their work written on related topics. Kennedy attacked the critical race scholars and ridiculed their work, rather than assessing the merit of the claim. See Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1748 (1989). Similarly, Kennedy stated in another work that black people have to practice “the politics of respectability” by aligning themselves with the “established moral standards of white middle-class Americans.” RANDALL KENNEDY, *RACE, CRIME, AND THE LAW* 17 (1997). These positions support white supremacy and undermine the inherent value of black people and people of color.
170. See Brian Mann, *Timeline: Black America’s Surprising 40-year Support for the Drug War*, PRISON TIME (Aug. 12, 2013), <http://prisonstime.org/2013/08/12/timeline-black-support-for-the-war-on-drugs>.
171. See Charisse Jones, *Crack and Punishment: Is Race the Issue?*, N.Y. TIMES (Oct. 28, 1995), <http://nytimes.com/1995/10/28/us/crack-and-punishment-is-race-the-issue.html>.
172. See GLICK, *supra* note 159; Taylor, *supra* note 159.
173. See Douglas Martin, *Elmer G. Pratt, Jailed Panther Leader, Dies at 63*, N.Y. TIMES (June 3, 2011), http://www.nytimes.com/2011/06/04/us/04pratt.html?_r=0 (Geronimo ji-Jaga was jailed for 27 years based on information not disclosed to the jury and that might have led to an acquittal.); *Former Black Panther Leader, Geronimo Ji-Jaga Pratt, Wrongfully Imprisoned for 27 Years, Dies in Tanzania*, DEMOCRACY NOW! (June 6, 2011), [http://www.democracynow.org/2011/6/6/former_black_panther_leader_and_political#](http://www.democracynow.org/2011/6/6/former_black_panther_leader_and_political#.).
174. See Taylor, *supra* note 159.
175. Federal prisoners rioted after the refusal of Congress to follow the Sentencing Commission’s recommendation and eliminate the sentencing disparities between crack and powder cocaine, costing the Federal government \$39.7 million to repair the damage. This information received little response from Congress, and even the organizations and individuals that advocated for and supported the Sentencing Commission’s recommendation made little of it in their organizing. See Bill Dunn, *Crack in the Federal Scheme: The October Rebellion of 1995*, PRISON LEGAL NEWS (Oct. 15, 2000), <https://www.prisonlegalnews.org/news/2000/oct/15/crack-in-the-federal-scheme-the-october-rebellion-of-1995>; Jones, *supra* note 171.
176. See FANON, *supra* note 28, at 8 (writers and poets described subordination as “making us into monstrosities”); *id.* at 15 (“the order is given to reduce inhabitants of the annexed country to the level of superior monkeys in order to justify the settler’s treatment of them as beasts of burden”); *id.* at 39 (“The look that the native turns on the settler’s town is a look of lust, a look of envy; it expresses his dreams of possession—all manner of possession . . .”); *id.* at 41 (dehumanization is important to white supremacy—“painting the native as a sort of quintessence of evil”). See also APTHEKER, *supra* note 13, at 1 (“recently California statesman, Ronald Reagan, found the ghetto rebels of today to be “mad dogs,” a South Carolina statesman of 1823 found plantation rebels of his day to be “monsters in human shape”); at 2 (first was the idea “of the actual sub-humanity of colored people; when persistence in this became impossible, it was altered to affirm the inherent, indelible and significant inferiority of such peoples”); *id.* at 53 (“ . . . most basic devices of control was the fostering of a belief in the innate inferiority of the Negro people The poison

was, too, deliberately and plentifully administered to the slave himself from childhood to the cemetery, so that he was ever aware that his most heinous crime, that for which there was no forgiveness, was to forget his “place,” to become “uppity”); *id.* at 54-55 (a mulatto girl “carried herself with a pride dangerous and incongruous for one in her station. Her greatest joy was the lovely hair that crowned her head, and so to make the child realize her place she was punished . . . the cutting off of the hair of a mulatto girl, who was almost white, and whose hair did not resemble in the least the woolly hair of the negroes . . . it was a great humiliation.”).

177. See Butler, *supra* note 138, at 772.
178. *Facts About Prisons and People in Prisons*, THE SENTENCING PROJECT (Jan. 2014), http://www.sentencingproject.org/doc/publications/inc_Facts%20About%20Prisons.pdf.
179. Butler, *supra* note 137, at 772. Butler cites to MICHAEL WALZER, JUST AND UNJUST WARS 251-68 (1977), where Walzer is arguing that the bombing of German cities in World War II was just, given the likelihood that the Nazis would triumph. Unless we do something strong and quick, the white supremacist laws and practices will triumph, decimating large numbers of black people, including the families and communities of the incarcerated as well as those blacks who are painted with the brush of subordination—we are all criminals, “monsters,” and only those who truly assimilate have any chance of escaping this doom.
180. *Citizens United v. Fed. Elections Comm’n*, 558 U.S. 310 (2010).
181. *Id.* See, *Report of The Sentencing Project to the United Nations Human Rights Committee Regarding Racial Disparities in the United States Criminal Justice System*, THE SENTENCING PROJECT 3 (Aug. 2013), http://sentencingproject.org/doc/publications/rd_ICCPR%20Race%20and%20Justice%20Shadow%20Report.pdf. (“Roughly 12% of the United States population is black. Yet in 2011, black Americans constituted 30% of persons arrested for a property offense and 38% of persons arrested for a violent offense.”)
182. See FANON, *supra* note 28, at 308-09.
183. See ENCYCLOPEDIA OF THE MIDDLE PASSAGE 203 -04 (Toyin Falola & Amanda Warnok eds., 2007); Shelly Moore, *As a Culture We Are Not a Small Minority. We Are Over 150 Million in Number, Stretching Throughout North, Central and South America. For Many of Our Ancestors This All Began at the ‘Ellis Island’ of Slavery, A Place Called . . . Goreë*, 93 THE CRISIS 18, 20 (1986).
184. THOMAS, LEST WE FORGET, *supra* note 13, at 13 (Slaveholder called enslaved lazy if they engaged in behavior such as work slowdowns “because they knew that their labor would benefit no one but their owner.”).
185. THOMAS, LEST WE FORGET, *supra* note 13, at 18-19.
186. 163 U.S. 537 (1896).
187. See FRANKLIN & MOSS, *supra* note 43, at 511 (This boycott also sparked a similar boycott of the buses in Tallahassee, Florida in June 1956.).
188. See FRANKLIN & MOSS, *supra* note 43, at 526-28; *Introduction: Freedom Summer*, AMERICAN EXPERIENCE, <http://www.pbs.org/wgbh/americanexperience/features/introduction/freedomssummer/> (last visited on Oct. 22, 2014)..
189. See Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677, 679 (1995).
190. See *Batson v. Kentucky*, 476 U.S. 79 (1986).
191. 50 UCLA L. REV. 721 (2003).
192. *Id.* at 741-42. Butler suggests that this type of resistance would perhaps require the potential juror to lie under oath since questions on voir dire may be quite specific to the person’s views on punishments or sympathies with black defendants. This risk is a consequence of resistance to the criminal punishment system’s structural racism that punishes subordinated people for conduct that flows from their subordination and requires those committed to ending subordination to take that risk. It is a demonstration that we know that the “criminality

- . . . [is] not the consequence of [innate attributes of the defendant] but the direct product of the [racially subordinative] situation. FANON, *supra* note 28, at 309.
193. See Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 (2010).
 194. Iowa, Connecticut and Oregon have laws requiring racial impact statements, and Minnesota has it as a part of its sentencing guidelines. See Maggie Clark, *Should More States Require Racial Impact Statements for New Laws?*, PEW CHARITABLE TRUSTS (July 30, 2013), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/07/30/should-more-states-require-racial-impact-statements-for-new-laws>.
 195. Indeed, Angela Y. Davis argues that the racist system of punishment in the United States has now snared whites. See DAVIS, *ABOLITION DEMOCRACY*, *supra* note 1, at 34.
 196. See, e.g., JODY DAVID ARMOUR, *NEGROPHOBIA AND REASONABLE RACISM: THE HIDDEN COSTS OF BEING BLACK IN AMERICA* (1997).
 197. See, e.g., GLORIA BLAKELY, *DANNY GLOVER* 92-93 (2002).
 198. See, e.g., KITTY KELLEY, *OPRAH: A BIOGRAPHY* 387-88 (2010).
 199. See, e.g., KENNETH MEEKS, *DRIVING WHILE BLACK: HIGHWAYS, SHOPPING MALLS, TAXI CABS, SIDEWALKS: HOW TO FIGHT BACK IF YOU ARE A VICTIM OF RACIAL PROFILING* (2010).
 200. See, e.g., Penny Bender Fuchs, *Jumping to Conclusions in Oklahoma City?*, AMERICAN JOURNALISM REVIEW (June 1995), <http://ajrarchive.org/Article.asp?id=1980> (Jordanian man arrested); *Black Man Falsely Accused in Boston Murder Sues Police*, L.A. TIMES (Oct. 18, 1995), http://articles.latimes.com/1995-10-18/news/mn-58391_1_black-man-falsely-accused-in-boston; Tommy Christopher, *CBS News Refutes CNN Report that Boston Bombing Suspect is 'Dark-Skinned Male' With 'Brown Skin'*, MEDIAITE (Apr. 17, 2013 4:22 PM), <http://www.mediaite.com/tv/cbs-news-refutes-cnn-report-that-boston-bombing-suspect-is-dark-skinned-male-with-brown-skin/>.
 201. See, e.g., Lyzette Alvarez & Cara Buckley, *Zimmerman is Acquitted in Trayvon Martin Killing*, N.Y. TIMES (Jul. 13, 2013), <http://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html>.
 202. See, e.g., *Justice is Served: Court Finally Overturns Marissa Alexander's 20 Year Sentence*, THE SOURCE (Oct. 17, 2014), <http://thesource.com/2014/10/17/justice-is-served-court-finally-overturns-marissa-alexanders-20-year-sentence>; Leslie Salzillo, *As Marissa Alexander Faces 60 Years, Her Abuser Plays Victim In Monday's Pre-Trial*, DAILY KOS (Oct. 21, 2014 5:35 AM), <http://www.dailykos.com/story/2014/10/21/1338068/-As-Marissa-Alexander-Faces-60-Years-Her-Abuser-Plays-Victim-In-Monday-s-Pre-Trial>.
 203. See Frederick Douglass, *What to the Slave is the Fourth of July?*, *Address Before the Rochester Ladies Anti-Slavery Society* (July 5, 1852), in THE NATION (July 4, 2012), <http://www.thenation.com/blog/168721/what-slave-fourth-july-frederick-douglass#>.
 204. See *William Lloyd Garrison and The Liberator*, USHISTORY.ORG, <http://www.ushistory.org/us/28a.asp> (last visited Oct. 19, 2014); FRANKLIN & MOSS, *supra* note 43, at 193-99.
 205. See SANDRA J. JONES, *COALITION BUILDING IN THE ANTI-DEATH PENALTY MOVEMENT: PRIVILEGED MORALITY, RACE REALITIES* 151-56 (2010).
 206. See DAVID C. BALDUS & JAMES W.L. COLE, *STATISTICAL PROOF OF DISCRIMINATION* (1980); DAVID C. BALDUS, GEORGE G. WOODWORTH, & CHARLES A. PULASKI, JR., *EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS* (1990); LEADERSHIP CONFERENCE ON CIVIL RIGHTS AND LEADERSHIP CONFERENCE EDUCATION FUND, *JUSTICE ON TRIAL: RACIAL DISPARITIES IN THE AMERICAN CRIMINAL JUSTICE SYSTEM* (2000), available at <http://www.protectcivilrights.org/pdf/reports/justice.pdf>.
 207. See *McCleskey v. Kemp*, 481 U.S. 279, 289, 314-15 (1987). See also Dennis D. Dorin, *Far Right of the Mainstream: Racism, Rights, and Remedies from the Perspective of Justice Antonin Scalia's McCleskey Memorandum*, 45 MERCER L. REV. 1035, 1038 (1994) (quoting Memorandum from Justice Scalia in No. 84-6811, *McCleskey*, 481 U.S. 279, to the Conference (Jan. 6, 1987) (on file at Library of Congress, Washington, D.C. in the *McCleskey v.*

- Kemp file of Thurgood Marshall papers)) (Scalia admitted that unconscious racism in death penalty cases by the prosecution and the jury was “real, acknowledged [court proceedings] of this court and ineradicable . . .” *Id.*).
208. North Carolina’s NAACP leads Moral Monday demonstrations where activists demonstrate on state capitol grounds, frequently engaging in civil disobedience. A coalition formed in March 2014 in Little Rock, Arkansas, Truth Tuesdays, holds weekly demonstration on state capitol grounds, and as with Moral Mondays, the demands are for legislative/executive actions to eliminate race, gender, class and gender identity discrimination for which the state has authority.
 209. *See, e.g.*, Justice Lewis Powell, writing for the majority in *McCleskey* opined that if the Georgia death penalty were held unconstitutional because of the proven racial discrimination in the imposition of the punishment, it would eventually lead to the elimination of other punishments based on a finding of racially discriminatory imposition. *McCleskey*, 481 U.S. at 314-15.
 210. *See* CHILDREN OF INCARCERATED PARENTS (Katherine Gabel & Denise Johnston eds., 1995); Theodore R. Curry & Guadalupe Corral-Comacho, *Sentencing Young Minority Males for Drug Offenses: Testing for Conditional Effects Between Race/Ethnicity, Gender and Age During the US War on Drugs*, 10 PUNISHMENT & SOCIETY 253 (2008), available at <http://www.sagepub.com/gabbidonstudy/articles/Curry.pdf>.
 211. By including a focus on young people between the ages of 16 and 30, many of them will be parents of younger children and can incorporate them into the rebellion strategies developed on the grassroots level.
 212. *See Welcome to the Delancey Street Web Site*, THE DELANCEY STREET FOUNDATION, <http://www.delanceystreetfoundation.org/> (last visited Oct. 19, 2014).
 213. FANON, *supra* note 28, at 306 (regression of Algerian criminality during the revolution).
 214. BOESAK & DEYOUNG, *supra* note 2, at 1.
 215. *See* WANG, *supra* note 32.
 216. BOESAK & DEYOUNG, *supra* note 2, at 13.
 217. BOESAK & DEYOUNG, *supra* note 2, at 9. (The term “reconciliation” was added by the National Party led by President F. W. de Klerk, to the truth commission being planned in 1993 for the transition of South Africa from apartheid to democracy. Boesak wrote: “They all consciously or unconsciously accepted F.W. de Klerk’s subliminal text: adding the word ‘reconciliation’ would smooth a process fraught with contradictions, risks and danger, loaded as it was with unspeakable things from the past.” *Id.* at 9 (citation omitted). According to Boesak and DeYoung, “reconciliation is often understood today as assimilation, appeasement, a passive peace, a unity without cost and maintaining power with only cosmetic changes.” *Id.* at 9).
 218. FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 98 (Charles Lam Markmann trans., Grove Press 1967) (1952).



Curtis McGuire

MY TIME IN FERGUSON

White Activist for Black Liberation

I had many reservations before writing publicly about my experiences in Ferguson, Missouri during the protests that started in August, 2014. This is the new civil rights movement. White people shouldn't assume the spotlight. Rather whites, like me, should use their privilege to elevate the people who are the most directly oppressed. Whites in the United States can't fully appreciate the discrimination and institutionalized racism that people of color face every day. For this reason, before I get into my personal experiences as an activist in Ferguson, I want to directly address the issue of my own privilege.

I grew up in Northern Michigan with ten brothers and two sisters. Our family tree is complicated: the 13 of us came from 3 mothers and 2 fathers, but we have always been one family. About half of the children came from my Aunt Linda, who died from a car accident before I was born. After a short time, my mother, Linda's sister, married Linda's husband (my father) so that she could be a guardian to the children while my father worked to put food on our plates and pay the bills. In the year after their marriage, they fell in love and had four additional children, myself included. I remember months when we ate oatmeal and baked beans for most meals. We could only afford powdered milk—except, of course, when we were milking our own goats. Our financial struggles eased as one by one the kids grew to adulthood.

In 1997 my father began to commute four hours each way to work in Detroit, visiting us only on weekends and sometimes—if his job took him to other parts of the country—less often than that. In 1999 my mother decided she'd had enough and moved with my younger brother and me—the only ones still under 18—to the Detroit area.

In 2004, I moved to the city of Detroit for college. I attended a private art school, the College for Creative Studies, and majored in Fine Arts with a focus in photography and collage. My BFA degree left me \$80,000 in debt (now somewhat reduced, thank God), which to this day is still tied to my parents, who cosigned my loans. My student loan payments are \$600 per month. Not only is it higher than all my other living expenses combined, but if I do not repay the loans, the lenders will go after my parents, something I cannot allow. To pay this enormous debt I work three part-time jobs in a city

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where most residents find it hard to find a single part-time job. My debt is a curse. It has placed me in a state of financial oppression, but, despite this and other hardships, I've come to realize that the education that my debt paid for has opened many opportunities to me that my non-white friends and comrades rarely enjoy—even my debt, and the ability of my parents to cosign for it, is a manifestation of white privilege.

I was politicized and brought to a heightened racial consciousness by the Occupy movement, which led me to where I am now, working for the Detroit and Michigan Chapter of the National Lawyers Guild. I'm a white ally to the Black Liberation Movement.

Every white person seeking to support the plight of black people in the U.S. should read the "Protocol and Principles for White People Working to Support the Black Liberation Movement."¹ It was written by the Bay Area Solidarity Action Team in response to Mike Brown's shooting. These principles lay out the groundwork for whites who seek to become ethical allies-in-struggle to persons of color. It provides valuable guidance to activists like me, who want to do good without doing any harm.

My time in Ferguson

I spent nineteen days in Ferguson and St. Louis during the protests. When I returned home several of my white friends thanked me for going. They told me I was strong for facing the danger. However, I understood that this was a magnification of the violence and danger people of color face on a routine basis—a widespread brutalization occurring in homes, neighborhoods, on the way to work, school, anytime, everywhere—that my well-meaning white friends couldn't appreciate. Being told by another white person that it requires strength to put myself in a situation where I might be hurt by police when so many people are forced to live in that world every day was embarrassing. I realized that I don't have the strength to be a person of color in the United States.

Black people have, at every turn, been forced to endure a perverse and sadistic form of unending shock therapy since the days when their own coerced labor built the U.S. economic system that still exploits them today. Despite this, many carry with them special forms of love, loyalty, and community that are unknown and incomprehensible to most whites in the U.S. These are the strongest people I know.

What I saw in St. Louis and in Ferguson was a systematically racist society doing its best to squash a rebellion of its most disenfranchised black youth who even now continue to fight against the perpetual threat of death for having the audacity to have been born black. Between August and November, 2014

I made periodic visits to the St. Louis area, primarily as a legal observer, but filling in however I was needed. It was a time I'll never forget.

August—Seven days after the murder of Mike Brown

On August 16, 2014 Governor Jay Nixon implemented a midnight curfew for Ferguson. I stood talking with a resident who stood on his front lawn looking out into his neighborhood one block away from where Mike Brown was shot. He told me that he saw the shooting occur. He talked about the police as if they were a criminal gang, that the murder was a message from law enforcement: “You do not fuck with us or we will kill you in broad daylight and leave your dead body in the street for all to see.” It’s a sentiment I have heard from many in Ferguson and Detroit alike. The actions of the police mirrored those of the KKK during the first civil rights movement.

Not far from where Mike Brown was shot police had turned a strip mall and Target parking lot into a cop shop for the armored trucks, extra personnel, and ambulances. That night, trying to get into Ferguson after dark was not easy. Police had blocked off a lot of major roads going through the city. We ended up walking a fair distance. West Florissant Street was lined with riot police. The four of us who’d travelled there from Michigan, equipped with our neon green NLG Legal Observer hats, cameras, and note pads, got to work gathering as many vehicle numbers, names, and badge numbers from the officers that we could. We didn’t expect it to get hot till after the state-imposed curfew. Shortly before midnight the lines of riot police all retreated behind armored vehicles that had come from the Target parking lot up the street. Using the long range acoustic device (“LRAD”), the police issued arrest warnings for being in violation of the curfew. At 12:30 A.M. the police fired several rounds of tear gas, unprovoked, into a crowd of 100 peaceful protestors. There was a brief moment of chaos when the group sprang in all directions, screaming and trying to avoid the metal canisters hurled at them. Protestors threw a few of them back at police, just to have more shot back into the crowd. A canister came down to my immediate right. It bounced to a halt and released its chemicals not five feet from me. I ran as the smoke engulfed my legs, right arm, and the right side of my face. I made it out with no long-lasting damage and very little in my lungs. But it burned—like the worst sunburn you’ve ever had and then some. It sizzled in my eyes and nose. Nothing could ease the pain. I heard someone shout out at the crowd, “Look out! They’re coming from behind!” At that moment, a series of things happened so quickly that I remember only one thing. I saw a single police cruiser barreling toward the group from the opposite end of an armored truck. People ran for their lives to avoid getting hit. My first thought was that the cops are going to arrest everyone they can. Time to start running! I wasn’t

the only one with this thought. A lot of people started running. The cruiser zipped into the crowd and turned 180 degrees while, mid-spin, bullets started flying. There were at least six shots. I didn't see the shooter. I wasn't sure if the cops were shooting or being shot at. In the chaos I recognized one of my fellow legal observers and told her to get down. We both dropped to the ground and lay flat on our stomachs. The cop car raced away faster than it had come in. The shooting stopped. We got up and ran around the corner and found a small group of people surrounding a young man who had been shot twice in the back with live ammunition. He was quickly put into a car and rushed to the hospital. I learned later that he survived his injuries. The press conference that the police held early that morning stated that:

Authorities then heard that there was a shooting victim near Red's, a police car was shot at, and a man stood in the street with a handgun.

Tear gas and smoke bombs were used to disperse a group of defiant protesters. By the time officers moved protesters from the scene, the shooting victim had been taken by private vehicle to a hospital, Johnson said. He did not know whether the victim was a protester.²

The press release clearly stated that the police only used force once the shooting had begun. This was an outright lie. The shooting came after the police began to teargas the protesters.

The following day was full of logistics. We dropped off our evidence with the legal team, and then two of my fellow legal observers and I were on our way back to Michigan. Over the next 48 hours I gathered up a few other legal observers to go back with me. I borrowed a flak jacket and helmet from a friend and got my first aid kit. We were on our way back to Missouri, where I stayed for several more days. During the two days I'd been back in Michigan, the tone in Ferguson had changed dramatically. Mass arrests had occurred and the National Guard had been called in for the first time. I got warnings from people on the ground that there were government checkpoints all around. The National Guard was turning away non-residents. All the back roads we had previously used to get around the police checkpoints had been blocked off with cement barriers. We walked a half mile from where we parked to get into Ferguson by foot. Shortly after we arrived, we came upon a group of protesters walking along a street who were ordered to keep moving or be arrested. It was over 100 degrees. The St. Louis county police refused to let a single person stop or sit. For hours people walked in circles on the sidewalk with police surrounding the group. People were forced to walk until they were too exhausted to do so any longer. I overheard many people say that they felt like they were in a prison yard being forced to walk in circles.

The next several nights were full of marches, many of which were coopted by “peacekeepers” and groups like the Revolutionary Communist Party who’d often attempt to steal control of the momentum on the street from the local groups. The peacekeepers, a group of clergymen and women, tried to prevent violence. By “stop” I mean that they tried to take control of the protests by making everyone into law-abiding protestors—“Gotta stay on the sidewalk! No! Don’t sit down! Listen to the police! Listen to me....”

At one point a group of protestors tried to start a sit-in on West Florissant. The peacekeepers were on them immediately, screaming into their faces with a megaphone: “You’re going to get everyone tear gassed or hurt!” The peacekeepers might as well have been deputized by law enforcement. They pointed people out to police. Anyone who didn’t obey their commands was an “instigator” and would be identified for police. Many got arrested. It was disgusting. At one point a peacekeeper tried to take a cell phone out of the hands of a legal observer on the scene after the peacekeeper had been seen providing information to a police officer. There was a small tussle, but the legal observer held on to his phone. When protestors would prepare for civil disobedience, the peacekeepers would plead and beg and sometimes try to physically move people away. Sometimes they were able to position themselves at the front of the group and lead the protestors on “law abiding” sidewalk marches.

Ferguson October: the Weekend of Resistance

October was packed with inspirational moments. Mid-afternoon on the second day of my stay, a hip-hop show in support of the movement was filled to capacity with activists and allies. Outside we waited to get in and shared stories with others in line. A young man began playing drums. A few minutes later a woman stepped in front of the drummer and they started playing their own music. Freestyle hip-hop filled the air as people gathered around. Some danced. The music built and at its peak, almost as if on cue, one of the women shouted, “ALIGHT! LET’S GO FOR A MARCH!” Just like that the line to get into a hip-hop show had turned into a protest. A couple of young kids led the chants. It was amazing to see nearly 150 people follow the lead of two black twelve-year-old girls. Later that night there was an organized rally at Chaifetz Arena in St. Louis. A lot of old-timer civil rights activists were on the docket to speak, including Cornel West and Cornell William Brooks, who represented the NAACP. Brooks’ speech was cut off by the audience who pretty much booed him off the stage as he failed to connect with the young crowd. His rhetoric—“If I could take a selfie of social justice...”—completely backfired. The crowd chanted to let bona fide activists speak. Local rap artists and organizer Tef Poe made his way to the stage.

Poe said there should have been an acknowledgment of gangs like the Crips and Gangster Disciples at the interfaith service because they offered more protection for black youth than the activists onstage. “You don’t see the GDs, the Vice Lords, the Crips [here] and they be out there in the streets,” he said. “The brother with the suit and tie on isn’t the guy who’s protecting me.”³

Getting into St. Louis’s Shaw neighborhood that night was intimidating. The police had literally blocked off every street that enabled drivers to get close to the action. We were a group of about twelve, including three legal observers. We decided we would try to walk past the police and see what was happening. Once it was clear to the police that we were going to walk by them, they got in their cars and left. That surprised me. We walked quite a distance to get to the staging location at the overpass that crossed above I-64. By the time we got there our group had grown to 200. Not far behind us, emerging from the nighttime fog, over the hill from the direction we had come from, groups trickled in and we ended up with a crowd of roughly 700 people. Perfectly silent, our swelling group marched on the sidewalk to cross the overpass. In front of us was the St. Louis University campus. At the far end of the bridge was a barricade of riot police. Quiet as we were, you could hear the police beating their nightsticks in the distance. There was a stand-off of about fifteen minutes. Organizers at the front of the group repeatedly asked to speak to a commanding officer, but kept getting no response. The police stayed in formation beating their shields like drums with their nightsticks. The police line eventually broke and they allowed us to pass. We made our way to the entrance of St. Louis University.

At the gate three university police officers stopped us yet again. They tried to tell the people in the front that they could not pass. About 15-people-deep into the crowd a young man shot his hand into the air holding his SLU Student ID card and proclaimed, while making his way to the front, “I AM AN SLU STUDENT! AND I HAVE BROUGHT A LOT OF GUESTS!” He walked past the police officers and the crowd followed, breaking the silence with cheers of victory. Chants rang out: “OUT OF THE BUILDINGS AND INTO THE STREET!” A group of SLU students responded to the call by joining the protest. The group marched to a circular courtyard and began an occupation. Around 3:00 A.M. the rain came and most of the people left, myself included. At that point I had only gotten four hours of sleep the past few days.

The next morning was packed with back-to-back actions. They began at the Ferguson Police Station where there was a several-hours-long protest at which Cornel West and other civil rights “leaders” were arrested. Throughout the rest of the day and night protests occurred all over the St. Louis area. I was sent to an action at a fundraiser for Steve Stenger, who was running for

county commissioner. Protestors blocked all the doors to the building, briefly preventing patrons from getting inside. A few protestors were arrested from the back and sides of the building to allow foot traffic in and out. The protestors on the front entrance were left alone until after the fundraiser ended.

We were next deployed to a Wal-mart where protestors had gone inside and disrupted business. Our group arrived a little late. Police had already begun arresting protestors inside. All of the doors to the building were closed and blocked off by police. Unknowing customers who just happened to be there were threatened with arrest and escorted out of the store. Outside, the group rallied and chanted as arrestees were placed in vans. We left. The protestors went on for many more hours, to another Wal-mart, a casino, a mall, a QT gas station, and back to the Ferguson Police Station. I don't know where or at what time they ended. I fell asleep that night watching the live-stream.

November and No True Bill

On November 24th word spread quickly as media reported that a decision about whether to indict Officer Darren Wilson would be made public at that night at 8 P.M. I spent several hours of the afternoon delivering warm winter gear to activist hubs around the area. The tone in the homes of activists that I met was tense and there was a lot of silence while the reality of the moment sank in. People considered what was going to happen if Darren Wilson was not indicted. People prepared to go out in the street regardless of the grand jury's decision. They readied themselves for a long night.

Nick Klaus, a third year law student from Wayne State University who had traveled there with me, watched the prosecutor make the announcement on television from the Legal Hub. To no one's surprise, the news that Darren Wilson had gotten away with murder was made official. We were deployed to West Florissant Street. We always took a buddy with us while working as a legal observer. Nick was mine. Ferguson sounded like a war zone that night. Frequent gunshots rang out from all sides near our location. Some sounded much closer than others. On West Florissant Street riot police were scattered all around in small groups. Things began peacefully but rapidly turned violent. When the illegal expropriation and destruction of property began every cop in sight retreated and left for at least 20 minutes, during which outraged citizens threw rocks through a McDonalds' windows and a Bank of America ATM was pummeled with a sledgehammer. A MetroPCS cell phone store, a beauty salon, a liquor store, a storage unit office building, and several other structures were set ablaze. When the police returned they pushed people back until a fire truck could reach the MetroPCS store. Firefighters attempted to put the fire out, but as the gunshots got closer to that location the firefighters pulled out, leaving the National Guard and St.

Louis County officers to watch the buildings crumble in flames. Once the fire trucks were gone, the police started to move their formation, pushing protestors further east on West Florissant Street. I went to move my car to ensure that I could leave when the time was ripe. I had an exit strategy, but it relied on my car being accessible. I pulled out and moved it a few blocks up. During the walk back I was surrounded by gunfire. People were pointing their firearms into the air or the ground as I passed. I purposely avoided looking at faces. A gun blasted off a shot not five feet from me. I dropped to the ground as I heard three men laugh as they warned me to be careful. I thanked them and kept walking back to my group, feeling that not taking my buddy with me had been a big mistake. I never once felt at risk of being hurt by protesters. My only source of fear was the police.

We stayed as long as we thought we were needed. Then we redeployed to the Shaw neighborhood. We had heard reports of police cars having been lit on fire there. We arrived as fast as we could and touched base with a few folks already there. We headed for Mokabe's coffee house, which we'd been told had been surrounded by police. Upon our arrival we heard from activists there that they had been tear gassed not too long ago. It was calm for the moment. We went inside to get a cup of coffee and warm up a little. The owner of Mokabe's had opened the doors as a safe space for the community. It had medic stations, charging stations, and free coffee for all who came through its doors. Seeing commotion, I went outside and almost as soon as I'd walked out the tear gas came down. I got a full dose. I couldn't breathe, I couldn't see, and everything burned. Mucus drained from my sinuses. Everyone around me was running and screaming. The gas had been aimed at the Mokabes' private patio where all the protestors had been gathered. As everyone ran for the door to get inside, the gas followed, filling the front room. People poured into the back and out into the alleyway. Following the group, we cut through the kitchen space and, barely able to see, I found a sink and stuck my face under the cold running water. It didn't help much.

When we got to the alleyway the police were waiting and more tear gas came from over the building and perhaps elsewhere. This caused more panic and everyone ran inside and down into the coffee shop's basement. I waited there for ten minutes. I needed air and was panicking a little. I went back out into the alley. To the right of the building was a staircase leading to a flat above. I climbed the stairs and sat above the lingering smoke. I loosened the Velcro that fastened my flak jacket and let my entire body relax for just a minute. I gathered myself. My eyes continued to hurt, but I could finally see. I headed back down to the basement to find my buddy and get him to come outside for a minute to scope the scene out with me. He and I went back into the alleyway. A white police van halted at the alleyway access and

opened its sliding door. Inside three riot police officers sat with weapons aimed directly at us and opened fire without warning. We ran like hell. We had no idea what type of ammunition was being used against us. We didn't wait to find out. We ran back inside the back door and I watched from a small window as more smoke filled the alleyway where I had been standing seconds before. There had only been six or seven people in the alleyway with me and everyone made it inside uninjured.

After a short while, a sizable chunk of the law enforcement left. We returned to the alleyway to collect the smoke canisters and rubber bullets (red marble-sized plastic balls with a white powder on the inside, which I think was for weight). We posted ourselves in front of the coffee shop. Most of the law enforcement had departed, as had many of the protestors. At 4:00 A.M. there were several other legal observers still around and we decided it was time to get little sleep. We got back to our beds at about 5:00 A.M. I was asleep by 5:30 A.M.

We woke up at 6:30 A.M. to catch a 7:00 A.M. protest in Clayton, which was really close to where we had been staying. The group was primarily white and led by clergy members. We marched on the streets for a few hours, rallied, then disbanded.

During the afternoon a march in downtown St. Louis ended up blocking traffic on the MLK Bridge to Illinois and on I-44 eastbound and westbound. The police arrested several people on I-44 and used a lot of pepper spray. I watched as a young white male got it particularly bad. A person of Middle Eastern decent was dragged away by his leg. A woman was picked up and dropped face-first on the ground. Creating a line and using pepper spray, the police pushed protestors back down the off-ramp and back into the street.

The next morning we caught one last march in downtown St. Louis. Protestors tried to occupy City Hall. The police arrested and beat several more people. They threatened bystanders with arrest simply for being in the area. At about 2 P.M. we headed home for Michigan.

These events will have a lasting effect on me. It's difficult to look through my photographs and videos. It's impacted my ability to stay on-task at work. I relive some of the more tense moments and have flashbacks and panic attacks—normal reactions for people who have witnessed this type of mass violence. I empathize with people who have experienced similar trauma. I find myself having conversations with much older activists who start stories off with “The first time I was tear gassed was . . .”

I have met many white people who want to know how to be better allies of black liberation. They come to me for advice. I always emphasize that

this is bigger than Ferguson. It extends throughout the history and territory of the United States. It's never further away than the black neighborhood in our nearest major city. In my own adopted hometown of Detroit, for instance, a 7-year-old girl, Ayanna Jones, was shot and killed when police raided the wrong house in 2010, causing public outcry and a small amount of national media coverage. Detroit Police Officer Joseph Weekley was charged with involuntary manslaughter and the reckless discharge of a firearm. After the first mistrial, the manslaughter charge was dropped and in October 2014, a second mistrial was announced. Detroiters and Ayanna's family still await justice for her murder, just as we all await justice for innocent people of color killed by police in communities across the country.

NOTES

- 1 Bay Area Solidarity Action Team, Protocol and Principles for White People Working to Support the Black Liberation Movement, *available at* <https://baysolidarity.wordpress.com/2014/12/19/protocolandprinciples/>.
- 2 Tim O'Neil, *Nixon Speaks On Several Sunday Morning Shows, Holder Orders Autopsy*, ST. LOUIS POST-DISPATCH (Aug. 17, 2014, 1:20 P.M.), http://www.stltoday.com/news/local/article_03b8ca92-776d-525d-b95e-4387ef63a3e2.html.
- 3 Howard Koplowitz, *Ferguson October: Cornel West Came To St. Louis 'To Go To Jail,'* INTERNATIONAL BUSINESS TIMES (Oct. 13, 2014, 6:27 A.M.), <http://www.ibtimes.com/ferguson-october-cornel-west-came-st-louis-go-jail-1703698>.



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Richael Faithful

#BLACKLIVESMATTER KITCHEN TALK

Black folk always talk about what some people call the “news.” We are interested in all kinds of news—who died, who’s leaving, who’s coming, who’s sleeping with whom, who got which job, whose kids are grown and what they’re doing. We talk about music, culture, and, of course, politics as we know them. In our kitchen-talk, porch-talk, stoop-talk, shop-talk, we say a lot of things that most white folks rarely hear because in these spaces we can be just a little more free or, at least, we face our own judgments of each other, shaped by our racist ecology, rather than carry the unique heaviness of “being Black.”

There has been a lot of talk since 2012 when Trayvon Martin was murdered and his killer was legally exonerated. Murmurs swirling around after Troy Davis’ execution in 2011 swelled into shouting after the taped murder of Eric Garner by the NYPD. I have been talking about the news with people whom I trust to share my heartache and resilience, including two friends: Zachari Curtis, a Black gender non-conforming¹ DC-native land justice activist and farmer, and Aaliya³ a queer Desi community-builder in her first year of high school teaching. Some weeks ago the three of us found ourselves in the kitchen as I prepared fixings. Interestingly, we shared some assumptions based on our politics and friendships, yet we had divergent reactions, insights and possibilities about the meaning of now. We turned over, chewed, swallowed, and digested each other’s sense of what’s happening. We had some kitchen-talk.

As with any kind of intimate talk, we trusted our motivations, appreciated our experiences, assumed nuances, desired openness, and knew that we were just sharing words, not making hard judgments about who we were or could be. Along with a common set of values, we had a shared analysis from which the conversation organically sprung. The topic of #BlackLivesMatter⁴ surfaced with our moods as I finished up a meal of tofu scramble and eggless pancakes. It is worth saying that many folks of color do not talk this way with each other, but the people I know do, and some of us are about as frank

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with our white friends and loved ones. But special permission is given when you are among people who also feel stuck neck-deep in the morose sea of things that you're struggling to describe. At our table, we soon discovered that the sea in which we swam was not equally thick, or high, or of the same substance, among one another or even within the different parts of ourselves, yet, we felt compelled to share the meaning behind the sea of things from our own points of view, right then and there.

Unsurprisingly, we agreed on a lot. Our sense is that the criminal system⁵ cannot be relied upon to administer justice for Black folks, and was, in fact, historically designed to control Blacks within a racial caste system.⁶ There always seemed to be different rules for definitions of crimes, reasons for arrests, charges to be filed and prosecuted, juries of "peers," views from the bench, verdicts, sentencing, and the rest since the slave times.⁷ Hidden rules for Blacks within the criminal system became even more entrenched when domestic terrorism, like white lynch mobs and the Klan, lost some of its public support. Such "extra-legal" norm enforcement existed through the Slave Codes, the Black Codes, and Jim Crow, which were literally different rules aimed at curtailing Black freedom and codifying subordination. Now, Jimmy Crow (as some have called this current era of racial caste by way of mass incarceration) continues the legacy of different rules for Black folks within a seemingly integrated system of justice.⁸ In all these ways we understood that the high-profile murders of Trayvon Martin, Mike Brown, and Eric Garner, and their killers' judicial exonerations, were merely examples of white supremacy operating as usual.

Aaliya⁹ and Zachari were especially tired of lawyers claiming that "if only the process had worked" justice would have been served.¹⁰ Initially, I raised my eyebrow and rested in my chair to listen harder. Evidently, they were not interested in the strange liberties taken by Sanford police in their treatment of George Zimmerman after Trayvon Martin's shooting under the guise of Florida's "Stand Your Ground" law.¹¹ They did not want to hear more about the absurdly abusive prosecutorial license exercised by Bob McCulloch in the Mike Brown case.¹² Nor did they have the patience to hear explanations about the statistical anomalies of Staten Island that contributed to the grand jury no bill vote for Daniel Pantaleo, one of Eric Garner's murderers.¹³ It simply did not matter which excuses lawyers tried to spin.

Rather, they agreed that the criminal system worked well in service of the purposes for which it had been designed: "institutionalized lynching."¹⁴ I certainly was not inclined, after leaving full-time law practice as a clemency lawyer, to defend the criminal system as one that represented any measure of justice. I had personally known the most disturbing stories of abuse, bias,

corruption, stereotyping, at all stages of the so-called system, from officer street targeting and harassment to crushing administrative debt carried long after finished sentences. I was, in fact, the least inclined at the table to defend the criminal system, though my impulse as a “lawyer” was to explain nuances. But, their point reinforced that nuances are academic given the system’s efficiency of collecting Black and Brown bodies. The system is not broken—it promotes the economic and social interests of well-off and middle-class white folks.¹⁵

The three of us also knew that there is a unique and pervasive quality to anti-Black racism in the United States. The levels of violence against a people whose ancestors were subjected to the largest forced migration in human history—in the belly of intercontinental slave ships—is shameful beyond words. This shame is only comparable to the systematic eradication of indigenous folks on lands now called the United States.¹⁶ Recent events have merely borne out the strange fruit of Black-white relationships in this country, revealing the sheer veracity of white folks’ fear of, and fascination with, Black bodies, Black cultures, and Black potentialities. Black Americans continue to survive in this contradiction of white obsession, and yet they thrive because of their own complexity and spiritual creativity. Black and Indigenous survival, in this country, are miracles indeed.¹⁷ When America pulls open the curtain of white supremacy, the truth emerges much like the Wizard in Oz—not only do Black lives matter, their lives are the reason that white lives still exist.

We were all impressed by the creative use of technology to more broadly expose, elevate, and protest targeted acts of violence against Black people. There is more documentation of stop-and-frisk, beatings, and shootings than ever before. Twitter hashtags like #Ferguson, #HandsUp, #BlackLivesMatter, #ICantBreathe, have broken (digital) binaries of racialized experience, which have challenged folks to read and think harder still on the crisis of violence against Black folk. The virtual world, too, has provided a platform from which younger folks have become their own narrators and organizers, with a little less meddling from entrenched civil rights institutions. Technologies are proving invaluable to liberation struggles in the States in similar ways it has helped peoples’ resistance around the globe.

We can also be sure that when a Black life is violently taken, and corporate media constructs the death as a “story,” there will be civil rights opportunists soon to follow. As long as there are cameras, we will see Rev. Al Sharpton mugging for a TV audience and taking the mic from young folks trying to speak for themselves. No example is more illustrative of an attempted takeover of #BlackLivesMatter by opportunists than last year’s “Justice For

All²⁷ March, organized by Sharpton's National Action Network and National NAACP. This event, remarkably, did not include a single young speaker on the roster. When 25-year old Ferguson-area organizer Johnetta Elzie rushed the stage because event planners denied her access, she was snatched away by the old guard—literally.¹⁸ The on-stage brawl that followed represented the madness that stems from egos and pockets that need to be lined, having nothing to do with the liberation politics that so many of us are creating every day. This example is the inevitable mess of any intra-community tension. While disappointing, it should not be mistaken as a license to judge Black people's deservingness to be killed with impunity, or to live within the global vision of the Beloved Community,¹⁹ in which we all can share in the Earth's abundance. After all, everyone, particularly beneficiaries of white racism in the U.S., have a whole lot of their own karma to work out, and fast.

Yet many righteous movement-people are uncertain about the meaning behind our present. Some, like Aaliya, believe that we are part of a particular political moment, in which momentum is propelling deep-rooted racial justice work forward to new levels of meaning and accomplishment. As a movement, this moment evolves our analysis and generates new responses to the racism of our time. Aaliya reminded us that four decades of blood, sweat, and tears since the '60s Civil Rights Movement created the current conditions that now allow us to finally start an investigation into politics from the eyes, ears, and mouths of Black folks.

Aaliya was relating the fact that almost nothing that is being said or done from the #BlackLivesMatter public platform is new to the three of us at the table nor to the elders that we know—there is just a broader, more captive audience, whose size and shape ebbs and flows over time. We talk, we build, we fight, we love, and we work through the convenience of invisibility. In other words, the odds are overwhelming that any specific justice-worker, whose work is mundane and day-to-day, will ever be widely known, much less end up in the history books. Yet, this work is the Movement, and periodically, it tips the balance.

Aaliya pointed to evidence of a shift, from spontaneous solidarity actions²⁰ across the world to volumes of media debate. The sour distaste of business as usual is growing into a powerful unsettling ferment for more and more people. They are discovering that this invisible encasement of racial and political control is corrosively toxic to white American life, too. Black folk already know how harmful racism is to them and for all of us. But, Aaliya insisted, we are now looking at racial politics from a curious position—as both a precipice and a threshold. On one hand, people who benefit from racial privilege are being made to confront the reality that the power they enjoy

will no longer exist if people they do not know, and rarely even see, are able to overcome their systemic powerlessness. As hip-hop artist Talib Kweli put down, it's a powerlessness that we overcome every day, with every precious breath, "just to get by."²¹

Zachari, scraping up some tofu, saw another side. They²² said, "Rodney King."²³ Aaliya and I knew exactly what they meant. Here rested the real breakdown of our expectations, an existential accounting of past, present, and future. By evoking Rodney's name, Zachari reminded us that in the U.S. revolutionary moments have been cynically cyclical. Emmett Till, Sean Bell, Trayvon Martin, Mike Brown. The brutal events and their aftermaths have become formulaic: (1) a precious²⁴ Black cis-gender²⁵ male life is violently taken by a white policeman or person assuming the same authority; (2) widespread public uproar and outrage; (3) some racial justice organizers try to ride the public wave of attention; (4) strong status quo backlash; (5) cultural amnesia sets in and interest wanes; (6) white supremacy feeds on apathy and gets stronger; and (7) organizers return to work on the calcified racial politics that remain. Our parents held the same aspirations about a shift in racial consciousness after Rodney King's beating, which—like Eric Garner's murder—was inhumane, captured on video, and caused widespread anger and protest after state authorities absolved the officers of responsibility. Perhaps, Zachari suggested, we're currently in a position somewhere between the inevitable and intense racist backlash and a cooling off period when folks with racial privilege remember just how good their lives are, especially by comparison. It may just be a matter of time until things return to white supremacy operating as usual, and we rinse and repeat, much as we have for the last four-hundred years.

But what really got Zachari exasperated, causing Aaliya and me to sit up from our vegan rancheros, was their pointed question: why does racial "progress" seem to require acts of violence, including the taking of Black lives? Their question ran deep. It would seem that only a small number of white folks are consistently and deeply concerned with the societal costs of racism on Black and Brown bodies, until a certain kind of Black person is killed in the streets. Then, suddenly, racism becomes a crisis that revives the "national conversation on race." It is a bitter irony that Black folk must be beaten, scarred, murdered, for their lives to matter to white America. And, to pour salt on the open wounds, Blacks are expected to face this violence compliantly. Zachari and I felt the pressure to always have "peaceful" (as opposed to non-violent) responses to our own destruction. It's as if a strong visceral reaction to these real threats to our existence makes us even more deserving of further violence.²⁶ Under white supremacist logic, a group of people whose survival is at stake should not assume a naturally defensive

posture. Black folks become “criminals” who riot and rage, unable to handle “grievances” in a civil democratic system. If we are becoming a more enlightened society, Zachari challenged, why do Black bodies remain sacrifices at the altar of the American Dream?

Aaliya and I acknowledged the poignancy of their point; however, we soon realized that it had a more subtle edge to it we didn’t appreciate at first. Zachari pressed harder at the vein by asking, “why are our experiences still [after so many centuries] defined by the ‘white gaze’?”²⁷ Throughout the many incarnations of systemic racism in this country, the reality is that Black lives matter but only in relation to more valuable white lives. We see it in the criminal system, in which Black-on-Black violence renders light sentences compared to Black-on-white violence. (Thus, proportionately Blacks are killed more often by the death penalty.)²⁸ We see it in schools in which communities spend far fewer resources on majority-Black schools than majority-white schools.²⁹ (Such disparities lubricate the fast-track into low-wage economic exploitation and the school-to-prison pipeline.) We see it in housing where multi-racial neighborhoods are assessed at much lower rates simply because there are too many Black residents, while predominately white neighborhoods see home values increase due to the absence of Black neighbors. (We are actually approaching higher levels of racial residential segregation despite slight income gains among some Blacks.)³⁰ Therefore, “progress” is predicated on whites noticing racism, and then caring enough to actually benefit less from it. This hollowed-out husk of hope does not center, affirm, or value Black folk.

Whites should hold Black life precious because they value all life, not from their own perspective of what is life-affirming for Blacks. Progress should flow from an empathetic understanding that all of us possess the right to self-determination within an inter-connected web of relationships. This is where we hit a high pitch at our table—marginalization within #BlackLivesMatter organizing. Zachari reminded us that the very hashtag, #BlackLivesMatter, was created by organizers who identify as Black queer women.³¹ Yet, as the movement’s images, mottos, and rallying cries reverberate, it is young Black straight cisgender men’s lives that we lament and strive to protect from violence, to the seeming exclusion of other, even more vulnerable, lives, like poorer queer, trans and gender non-conforming women.

We are witnessing the real-time erasure of stories of queer and transisters whose lives are also brutally taken. The daily levels of violence often faced by gender non-conforming/queer folk of color are routinely ignored and #BlackLivesMatter has not necessarily changed that fact. Chances are that most folks do not know of Ms. T, Mia Henderson, Kandy Hall, Tiffany

Edwards, Ashley Sherman, and many other trans-women who were murdered at the end of 2014.³² Already this year, Ms. Lamia Beard was murdered on January 17 in Norfolk, Virginia.³³ Local police and media have mis-gendered her in reports and framed attention around her criminal record, unsurprisingly. Lourdes Ashley-Hunter, co-founder of the Trans Women of Color Collective, based in D.C., commented, “Another one of our sisters lost to brutal violence. She was 30 years old.”³⁴

Only isolated pockets of media have picked up on the tragedies and triumphs queer folks of color experienced this past year *alongside* the #BlackLivesMatter organizing.³⁵ While trans and gender non-conforming folks marched in the streets with their cisgender brothers and sisters through Ferguson military-style assaults and all, not many of these folks joined up at their vigils, attended their rallies, or came to their meetings in solidarity.

A particularly painful part of this erasure is the co-optation of resistance language and strategies from queer-folk “in service” of the banner to save Black men from harm, when sadly in many cases Black men remain perpetrators of violence against Black queer folk and trans-women. If we are serious about the meaning behind #BlackLivesMatter and want to honor the sacredness of all Black life, we must be willing to interrupt whites’ long-preoccupied fear of Black men, challenge pervasive myths that ignore acts of state and inter-personal violence against Black women, and stop tolerating violence against trans and queer people as normal or fun or helpful, *at the same time*. If we are really ready for (nonviolent) revolution, we must line up to protect the blessedness of Black cultural life, of Black spiritual life, of Black intellectual life, and of Black relationship to the natural world. Zachari laid down resonance that #BlackLivesMatter is not #BlackCisMenMatter. by exclaiming once the mainstream movement was interested in saving Black trans/gender non-conforming lives, then we could talk. “Find me when you’re ready,” they invited.

Some of us have been ready for some time. Next, we found ourselves asking where are our Black elders who held vigil for radical thought throughout the liberal civil rights movement? We remember that many of our brave, visionary elders were situated much like us—breathing at the margins, living by courage, pushing out bigger visions. Some of these luminaries are ancestors but some are not—and who is listening to them? Why are there no forebears, next to our young leaders, standing on stage in front of swelling audiences? They have told truth across time and more of us must see and learn from them.

Here, Aaliya stressed that once the popular Civil Rights Movement gains were made, many Black folks who found themselves as activists, fled to the

seeming security of capitalism's arms to seek respectability in government jobs. This observation was not intended to impeach some of our parents, who'd passed on the hard-earned benefits of middle-class education and opportunity to us, to the extent that such things are available to Black folk. Instead, we wanted to know where were the Black rebels of all stripes, who played funk, put on arm-bands, raised children alone, served time, called folks out, and kept it movin'? We know of some survivors from the old struggles and want to hear more of what they have to say. We want to care for them as they cared for us before we were born. We want to carry their wisdom and deliver it to the professional civil rights establishment, so that they can deflate their egos and step aside.

The three of us began drinking fresh tulsi tea. We tacitly resolved that in hindsight, popular history fuels myths exaggerating widespread courage among the aggrieved, just as it does about the goodwill for change among the complicit. It seems like now and then a couple of our bravest contributors are hand-picked and sanitized into heroes while the rest are ultimately decimated by the trials of resistance.

Our bellies and minds were full at this point. We felt better in some ways, troubled in others. We had slogged through that morose sea of things together for an hour. After all, racism is the water in which Americans swim. We did not reach consensus on whether the corporatized civil rights machinery will be redesigned to make room for the new. We did not swap analyses on strategies that will force similar levels of protection for Black, queer and trans folks as for cisgender straight men. We did not agree on whether #BlackLivesMatter is just a political moment or a new liberation movement. Those are talks for another time. The struggle for Black liberation has a very long history and we shared in that history during our meal. We talk. We build. We fight. We love. We work. We try.

NOTES

- 1 Zachari, as a gender non-conforming person, uses the pronouns "they" and "them," which will be used in this essay. The use of plural pronouns is not a grammatical error. For a helpful quick and dirty introduction, see *Medical Queeries: Gender Neutral Pronouns*, YOUTUBE (July 20, 2014), <https://www.youtube.com/watch?v=QHjXdM7c44>. Another helpful resource is an older children's book, JNK DAVIS, WHO IS ZE? (1970). There are also plenty of online resources published by colleges and universities.
- 2 Aaliya is also a brilliant and close friend whose incisive clarity is not captured in this essay.
- 3 #BlackLivesMatter is a twitter hashtag created by queer women of color, Alicia Garza, Patrisse Cullors, and Opal Tometi, as a call to action after Trayvon Martin was "posthumously placed on trial for his own murder and the killer, George Zimmerman, was not held accountable for the crime he committed." This hashtag grew into a "movement project" after Mike Brown's murder by former Ferguson, Missouri policeman, Darren Wilson. Since, it has been imitated on and off social media as a kind of slogan by other organizers, many of whom do not know the origins of this "ideological and political intervention." To learn

- more about the rich intellectual and cultural history of this project, in the founders' own words. See Alicia Garza, *A Herstory of The #BlackLivesMatter Movement*, THE FEMINIST WIRE (Oct. 7, 2014), <http://thefeministwire.com/2014/10/blacklivesmatter-2/>.
- 4 I cannot describe our "criminal justice system" as such, so I tend to use the short-hand of "criminal system," which describes what it purports to do—adjudicate criminals—though, I have plenty of critiques about this description as well. I use "criminal system" in this short essay to establish a shared understanding within a legal audience.
 - 5 Racial caste is a description that is gaining more popularity, notably because of Professor Michelle Alexander's use of it to emphasize the tight social stratification that race plays in the United States. However, for decades, social scientists, such as Michael Omi and Howard Winant, have been making similar analogies between the racial mobility barriers and class-based barriers, such as caste systems, in the United States. See MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 57-64 (3d ed. 2015) (1986).
 - 6 Many critical race scholars have enumerated the ways in which implicit bias is woven within the fabric of the criminal system. A useful description is the "reasonable racist," which is a critique that explains how the legal norm of "reasonableness" is constructed by race. See Jody D. Armour, *Race Ipsa loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes*, in *CRITICAL RACE THEORY: THE CUTTING EDGE* 180, 180-193 (Richard Delgado & Jean Stefancic eds., 2d ed. 2000).
 - 7 As mentioned before, Professor Michelle Alexander's critical race theory book beautifully explicates mass incarceration within a context of historical and present racial caste in America. This book has been on the scene for a few years, yet it remains one of the few crit-books with such impact on everyday folks and movement-building. If you have gotten away with not reading it thus far, but pretend that you have, let me suggest that it is definitely worth the time. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012).
 - 8 A pseudonym.
 - 9 As much as I would like to avoid throwing Vincent Warren, Executive Director of the Center for Constitutional Rights, under the bus because CCR does very radical legal work, his on-air appearances perpetuated the rationale that the main gripe about the grand jury non-indictment was that system was not used properly. See, e.g., *Vince Warren, How Police Officers Get Away with Killing from Ferguson to NYC*, DEMOCRACY NOW! (Dec. 4, 2014), http://www.democracynow.org/2014/12/4/vince_warren_on_how_police_officers.
 - 11 See, e.g., Tamara Rice Lave, *Shoot To Kill: A Critical Look At Stand Your Ground Laws*, 67 U. MIAMI L. REV. 827, 852 (2013) ("The police took Zimmerman into 'investigative detention,' but he was released that same evening without being charged. On March 13, Sanford Police Chief Billy Lee stated that there was no evidence to contradict Zimmerman's claim that he had shot Martin in self-defense. Such a statement wasn't surprising since the police failed to protect the crime scene and did not extensively canvass and interview potential witnesses in a timely fashion.")
 - 12 A formal bar complaint was issued against St. Louis County Prosecutor, Bob McCulloch, and his Assistant Prosecutors, for their "gross failure to vigorously represent their client." See Letter from Christi Griffin, The Ethics Project, to Alan Pratzel, Chief Disciplinary Counsel, Office of the Chief Disciplinary Counsel (Jan. 5, 2015), available at <https://s3.amazonaws.com/s3.documentcloud.org/documents/1390219/mcculloch-disciplinary-complaint.pdf>. Further, "Grand Juror Doe" sued to lift a gag order so that he could speak openly about alleged misrepresentations by Bob McCulloch. See Nicole Flatow, *Ferguson Grand Juror Sues Prosecutor To Lift Gag Order*, THINK PROGRESS (Jan. 5, 2014, 1:55 P.M.), <http://thinkprogress.org/justice/2015/01/05/3607990/ferguson-grand-juror-says-prosecutor-dramatically-mischaracterized-darren-wilsons-case/>.
 - 13 See, Harry Enten, *The Grand Jury In the Eric Garner Chokehold Case Was Especially Unlikely To Indict*, FIVETHIRTYEIGHT (Dec. 3, 2014, 4:57 P.M.), <http://fivethirtyeight.com/datalab/eric-garner-chokehold-staten-island-grand-jury-indict/>.

- 14 “Institutionalized lynching” is a term used more broadly in our table-talk than in typical academic circles. If you want to further understand the creative use of this term, in the context of gender and sexual critical social theory, *see generally*, PATRICIA HILL COLLINS, *BLACK SEXUAL POLITICS: AFRICAN AMERICANS, GENDER, AND THE NEW RACISM* (2004).
- 15 I was reminded that “it’s the design, stupid!” I actually have written this much before in relation to my former area of practice, civil rights disenfranchisement. *See* Richael Faithful, *Toward The Heart of Justice*, 69 NAT’L LAW. GUILD REV. 239, 245 (2012), available at <http://www.nlg.org/resource/nlg-review/volume-69-no-4> (arguing that permanent disenfranchisement was not part of a broken system, it was a relic of a system expressly intended to deny full Black citizenship once slaves were emancipated).
- 16 This reference is in the broadest of strokes but needed to be made. One of my favorite critical race and post-colonial theorists is Robert A. Williams, Jr. *See generally* ROBERT A. WILLIAMS, JR., *LIKE A LOADED WEAPON: THE REHNQUIST COURT, INDIAN RIGHTS, AND THE LEGAL HISTORY OF RACISM IN AMERICA* (2005) and ROBERT A. WILLIAMS, JR., *SAVAGE ANXIETIES: THE INVENTION OF WESTERN CIVILIZATION* (2012).
- 17 This statement is complex because I don’t want to erase the survival of other people of color. I merely wanted to acknowledge the miracle of Black survival in the context of our conversation, and necessarily, an acknowledgement of indigenous lives, which existed before other human life on these territories.
- 18 Please take a look at these rally photos in which activists are pulled off-stage. The headline is that Al Sharpton’s group couldn’t even pencil in time for Ferguson organizers whom they knew would be in attendance. Fortunately though, a few DC area activists stood in solidarity with the Ferguson organizers, including Erika Totten, featured in the widely syndicated photo representing the generational struggle. Erika, whom I know personally, is one of the main organizers of #BlackLivesMatter DMV and runs a group committed to the emotional emancipation of Black people called To Live Unchained. *See* Kirsten West Savali, *The Fierce Urgency of Now: Why Young Protestors Bum-Rushed the Mic*, THE ROOT (Dec. 14, 2014, 3:00 AM), http://www.theroot.com/articles/culture/2014/12/the_fierce_urgency_of_now_why_young_protesters_bum_rushed_the_mic.html.
- 19 The Beloved Community is most often associated with Martin Luther King Jr.’s teachings, connected to his Three Evils: poverty, racism, and militarism. However, the term originated from theologian Josiah Royce, founder of the influential civil rights-era group, Fellowship of Reconciliation (FOR). *See, The King Philosophy*, THE KING CENTER, <http://www.thekingcenter.org/king-philosophy#sub4> (last visited Feb. 15, 2015).
- 20 Even more recently, one of the #BlackLivesMatter co-founders, Patrisse Cullors, toured the United Kingdom to support the solidarity movement-building that has sprung up on the other side of the pond. *See* Shahida Muhammad, *‘Black Lives Matter’ Goes Abroad*, OOGEEWOOGEE (Feb. 5, 2015), <http://oogeewoogee.com/black-lives-matter-goes-abroad/>. For another powerful solidarity analysis, *see also* Mia McKenzie et al., *Black Lives Matter; Today and Always: January 15 Highway Action Solidarity Statement*, BLACK GIRL DANGEROUS (Jan. 16, 2015), <http://www.blackgirldangerous.org/2015/01/black-lives-matter-today-always-january-15-highway-action-solidarity-statement/>.
- 21 This guest-laden track is a catchy one, but I need to do due diligence by pointing out that it samples legend Nina Simone’s beautiful song, “Sinnerman.” *See* NINA SIMONE, *Sinnerman, on PASTEL BLUES* (Philips Records 1965).
- 22 This is another reminder that Zachari uses gender-neutral pronouns of “they” and “them.” *See supra* note 1.
- 23 I am entertaining the possibility that there are younger folks who do not know or fully appreciate the gravity of the ten minute taped beating of Rodney King by LAPD officers in 1991. Mr. King died in 2012. *See* Jennifer Medina, *Rodney King Dies at 47: Police Beating Victim Who Asked ‘Can We All Get Along?’*, N.Y. TIMES (June 17, 2012), http://www.nytimes.com/2012/06/18/us/rodney-king-whose-beating-led-to-la-riots-dead-at-47.html?pagewanted=all&_r=0.

- 24 I am intentionally evoking one of Professor Cornel West's aphorisms—"precious"—he often uses this adjective to talk about Black folks' lives. I assume that for him the use of "precious" in describing Black lives is theological and political. I use it the same way here.
- 25 Admittedly, "cisgender" is not my favorite word because it doesn't reflect the full complexities of gender. Yet, it draws a pole in this conversation, by defining folks who are not trans, gender nonconforming or otherwise queer-identified. Apparently this is another adjective that is gaining popularity. See Katy Steinmetz, *This Is What 'Cisgender' Means*, TIME.COM (Dec. 23, 2014), <http://time.com/3636430/cisgender-definition/>.
- 26 Let's be clear. My friends and I are committed to "militant non-violence." Personally, I make space for anger in my heart that despairs the stranglehold of white supremacy with violent force. It makes me want to scream at the top of my lungs, beat the ground with my fists, and take to the streets. My reactions are the release of pain and reclamation of power that are violent but not of violence. Non-violence is much more complicated in form than what is presented in the popular imagination. For an investigation of its U.S. origins via pacifism, and its intersection with the '60s Civil Rights Movement, see BAYARD RUSTIN, *I MUST RESIST: BAYARD RUSTIN'S LIFE IN LETTERS* (Michael G. Long ed., 2012).
- 27 We originally misheard Zachari as saying "white gays," not "white gaze." This was both hilarious and apt. The marginalization of many queer folks by corporate white gay cisgender men is similar to the push-out discussed further in this essay about the erasure of queer women of color within mainstream #BlackLivesMatter organizing.
- 28 For a more recent article of this reality, see Matt Ford, *Racism and the Execution Chamber*, THE ATLANTIC (Jun. 23, 2014, 3:39 P.M.), <http://www.theatlantic.com/politics/archive/2014/06/race-and-the-death-penalty/373081/>.
- 29 See Ary Spatig-Amerikaner, *Unequal Education: Federal Loophole Enables Lower Spending on Students of Color*, CENTER FOR AMERICAN PROGRESS (2012), <https://cdn.american-progress.org/wp-content/uploads/2012/08/UnequalEducation.pdf>.
- 30 See generally Patrick Bayer, Hanming Fang & Robert McMillan, *Separate When Equal? Racial Inequality and Residential Segregation*, 82 J. URBAN ECON. 32 (2014), available at <http://www.sas.upenn.edu/~hfang/publication/segregation/JUE-final.pdf>. See also Richard Rothstein, *Economic Policy Institute, The Making of Ferguson: Public Policies at the Root of its Troubles*, ECONOMIC POLICY INSTITUTE (2014), <http://www.epi.org/publication/making-ferguson/> (explaining the ways in which residential segregation contributed to racial isolation in suburban towns like Ferguson, Missouri which exacerbate policing of Black communities).
- 31 See *supra* note 3. ("When you design an event / campaign / et cetera based on the work of queer Black women, don't invite them to participate in shaping it, but ask them to provide materials and ideas for next steps for said event, that is racism in practice. It's also hetero-patriarchal. Straight men, unintentionally or intentionally, have taken the work of queer Black women and erased our contributions. Perhaps if we were the charismatic Black men many are rallying around these days, it would have been a different story, but being Black queer women in this society (and apparently within these movements) tends to equal invisibility and non-relevancy." Garza, *supra* note 3.)
- 32 See Kesiena Boom, *We Speak Their Names: For The Black Trans Women Murdered This Year*, FOR HARRIET (Nov. 20 2014), <http://www.forharriet.com/2014/11/we-speak-their-names-for-black-trans.html#axzz3PuaLVv00>.
- 33 See Michael K. Lavers, *Trans Woman of Color Murdered in Va.*, WASH. BLADE (Jan. 23, 2015), <http://www.washingtonblade.com/2015/01/23/trans-woman-color-murdered-va/>.
- 34 *Id.*
- 35 See Toshio Meronek, *Nine LGBTQ Stories Big Media Ignored in 2014*, TRUTHOUT.ORG (Dec. 31, 2014), <http://www.truth-out.org/news/item/28270-nine-lgbtq-stories-big-media-ignored-in-2014>.



privilege are at the same time denied and enjoyed—or, more properly, denied so they can be enjoyed. It's for this reason that Fran Leibowitz recently said that today “it is worse to be called a racist than it is to be one.”² Recognizing the existence of white privilege takes all the fun out of it.

Mass protests emerged last year after the high-profile killings of two unarmed black males, Michael Brown and Eric Garner, by police officers in Ferguson, MO and New York City, NY, respectively. These deaths were neither exceptional nor unpredictable. Nor were the 32,975 arrest warrants for non-violent offenses issued in Ferguson, a city of 21,375 mostly black residents,³ in 2013.

It is in solidarity with those who, often at great personal risk, participated in the protests in Ferguson and New York (and elsewhere) against the systematic use of racially purposed state violence against black people that we present this Race and Criminal Injustice theme issue.⁴

In “Racial Disparities in Punishments and Alienation: Rebellious for Justice,” Prof. Adjoa Artis Aiyetoro brings the lessons of her long and distinguished career as a civil rights attorney and academic to bear in an article that examines from its origins the nature of what she calls the “criminal punishment system.” The article is animated by sociological and ethical concepts as much as legal ones, culminating in an original and inspiring call for a new “rebellion” against persistent outrages.

“My Experiences as a Legal Observer of the 2014 Black Liberation Movement in Ferguson, Missouri” is a memoir from a Guild legal observer on the frontlines of the marching rebellion. Curtis McGuire spent 19 days at the heart of the great protest movement—confronting, chanting, fleeing police aggression, and otherwise sleeplessly fighting to ensure that the demonstrations would be heard the world over. He recounts his experiences in Missouri vividly and with the urgency of the cause which sent him there.

In “#BlackLivesMatter Kitchen Talk,” *NLGR* Executive Editor Richael Faithful reflects on a discussion she and two thoughtful friends shared not long ago on the activism that arose against the racist police violence of 2014. It's a discussion grounded in perspectives not commonly included, or sufficiently valued, in the dominant media discourse. These are voices demanding to be heard and from which most of us have a great deal to learn.

—Nathan Goetting, *Editor in chief*

1 See Leah Sakala, *Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity*, PRISON POLICY INITIATIVE (May 28, 2014), <http://www.prisonpolicy.org/reports/rates.html>. Sources differ on the precise numbers, but the general truth of radical disproportionality is apparent wherever one looks for data.

2 *Episode 344*, REAL TIME WITH BILL MAHER,

3 See Joseph Shapiro, *In Ferguson, Court Fines And Fees Fuel Anger*, NPR (Aug. 25, 2014, 5:56 PM), <http://www.npr.org/2014/08/25/343143937/in-ferguson-court-fines-and-fees-fuel-anger>.

4 In this issue, the word “black,” when used to designate a racial group, will begin with either a capital or lower-case “b” according to the author's preference.

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