Racial Discrimination

Reimagining Rights & Responsibilities in the U.S.
Reimagining Rights & Responsibilities in the United States: Racial Discrimination

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INTRODUCTION

When President Lyndon B. Johnson signed the 1964 Civil Rights Act into law, his action honored a decades-long struggle by grassroots activists and dedicated political leaders to ensure national protection for racial equality. With the landmark agreement, Johnson fulfilled his promise, expressed in his first State of the Union speech earlier in the year, that “this session of Congress be known as the session which did more for civil rights than the last hundred sessions combined.” The historic legislation sought to eliminate racial discrimination on the federal level in broad categories including employment, education, voting, and public accommodations. The Civil Rights Act paved the way for other major federal laws outlawing discrimination in more targeted areas, such as the 1965 Voting Rights Act and the 1968 Fair Housing Act.

Over half a century later, the promises of the Civil Rights Act are threatened by sustained efforts to undermine its protections for equal rights and opportunities across racial identities. The era in which the Civil Rights Act was passed saw a flourishing of state and federal legal action to further protect racial minorities’ rights and constitutional protections in the United States. In recent decades, however, courts and public officials have imposed obstacles in accessing legal remedies against racial discrimination in all areas of society, including housing and employment. Harvard University law professor Alan Jenkins describes this phenomenon as a “closing of the courthouse doors,” especially at the Supreme Court level, where it has become increasingly more difficult for “complainants of color to bring claims in court.” This phenomenon is especially present in protecting against housing discrimination where the rising burden of proof requirements and erosions of “disparate impact” protections have made it harder for victims to access legal remedies.

Exacerbating these legal challenges is a social behavior that, despite legal protections, continues to perpetuate de facto discrimination in housing, education, labor, and criminal justice. At its worst, this discrimination can cost racial minorities their lives—as the recent attention given to shootings of Black men and women by white law enforcement officers has shown. The emergence of social advocacy movements such as Black Lives Matter over the past decade has laid bare the reality of an America that has yet to fulfill the aspirations of racial equality enshrined in the 1964 Civil Rights Act. Worse yet, the effects of the recent COVID-19 pandemic have shown just how pervasive and detrimental racial discrimination is in the country. Minority communities already disadvantaged with poorer access to housing, health care, and stable employment have faced greater consequences from the pandemic, with higher rates of infection and death, and greater economic loss.

This chapter surveys the historical evolution and current status of racial discrimination within the U.S. in several key areas: criminal justice, housing, education, labor, and society at large. Next, the chapter looks at the current status of discrimination within these five categories, including recent legislative and political efforts to weaken equal protection along racial lines. Finally, the chapter concludes with recommendations to reinforce the government’s responsibility to uphold anti-discriminatory protections and restore individuals’ rights to equal access and protection.

HISTORICAL ANALYSIS

RACE AND THE JUSTICE SYSTEM

Arguably, no area is more emblematic of the ongoing crisis of racial discrimination than the criminal justice system. The effects of mass incarceration and aggressive, sometimes lethal, police practices further perpetuate discrimination towards minority communities. (See also “Criminal Justice”).

POLICING

For racial minorities, justice disparities begin at the very first interaction with the criminal justice system. Cases of law enforcement discrimination against minorities have occurred throughout U.S. history. In 1929, the Illinois Crime Survey, a study focused on the Illinois court systems, found that while African Americans made up only 5% of Chicago and Cook county populations, they accounted for 30% of the victims in police-related deaths. In Jim Crow South, police often used their authority to constrain and control the movements of African Americans. African Americans were routinely stopped or arrested for offenses that would be considered trivial had they been committed by a white person. It was not uncommon for police officers to also hold membership in the white supremacist
Black men are 2.5 times more likely to be killed by police than white men, and Black women 1.4 times more likely to be killed than white women.

Ku Klux Klan (KKK), or at the very least to sympathize with the group’s ideology.⁴ Police involvement with the KKK became such an issue that in 1871 Congress passed the Ku Klux Klan Act to prohibit state actors [the police] from violating the Civil Rights of all citizens in part because of law enforcements’ involvement with the infamous group.⁵

During the Civil Rights Movement, the advent of mass photography and television coverage brought images of police beatings of predominately African American civil rights protesters to the larger American and international public. The startling images brought to the fore a reality long experienced by minority communities, leading to legislative change that culminated in the civil rights legislation of the 1960s. High profile cases of police brutality, however, have continued to capture the public’s attention long after the Civil Rights Era. The 1991 beating of African American motorist Rodney King and the subsequent acquittal of the white Los Angeles Police Department responsible for the incident, led to multiple days of protest and rioting over the lack of accountability by the police in their hostile interactions with African Americans.

In recent years, police involvement in the shooting deaths of 12-year-old Tamir Rice and 18-year-old Michael Brown in 2014, the death of Sandra Bland in police custody in 2015, and the shooting of Philando Castile during a traffic stop in 2016, have continued to bring public attention the harsh and oftentimes deadly tactics used by police against minorities, and the rare instances of officers being held accountable for their roles in deadly incidents. These incidents have continued to the present day, with an ever-increasing list of names of minority victims, including the 2020 deaths of Breonna Taylor and George Floyd.⁶

A 2019 research study presented to the National Academy of Sciences found that minorities are more likely to be killed by police than white people.⁷ Among its findings are that Black men are 2.5 times more likely to be killed by police than white men, and Black women 1.4 times more likely to be killed than white women. American Indian men are between 1.2 and 1.7 times more likely to be killed by police than white men, and American Indian women are between 1.1 and 2.1 times more likely to be killed by police than white women. Latino men are between 1.3 and 1.4 times more likely to be killed by police than white men.⁸

Research in 2018 by Northeastern University’s Shytierra Gaston suggests that “out-of-place” policing may shed light on the use of heavy law enforcement tactics towards communities of color.⁹ The research shows that police rely on the relationship between neighborhood demographics and suspects to identify and police “out-of-place” individuals in predominately non-minority areas.¹⁰ In other words, “Police officers are more likely to treat as suspicious persons who seem out of place in their surroundings. To police officers, race serves as a marker of where people ‘belong,’ and racial incongruity serves as a marker of suspicion.”¹¹

Recent cases have also demonstrated police discrimination towards minorities within their own communities. In 2019, for example, Atatiana Jefferson was shot through the window of her Miami home when police responded to a report from a neighbor that her front door had been left open. In 2018, Stephon Clark was shot while standing in the backyard of his grandmother’s Sacramento home, when police mistook his cell phone for a gun.¹²

Policies and criminological theories in the late 1980s-90s promoted aggressive police tactics, and the effects are still being felt today. The 1980s ‘Broken Windows’ theory by George Kelling and James Wilson posited that cracking down on smaller-scale infractions like vandalism, public drinking, and loitering

6. Ibid.
7. Ibid.
10. Ibid.
prevented more serious crime from occurring in neighborhoods. Critics argued that the vagueness of the social disorders outlined in the theory resulted in too much discretion in enforcement, with minorities targeted most often. Most famously, the New York Police Department adopted ‘Broken Windows’ policing and similar controversial tactics like stop-and-frisk, which disproportionately impacted African American and Latino men. Research has since shown that such stops did little to fight crime, but had long-lasting negative effects on young black students. A 2020 study by the Harvard Kennedy School's Andrew Bacher-Hicks and Elijah de la Campa, for example, found that black middle-school students from neighborhoods heavily impacted by stop-and-frisk were more likely to drop out of school and less likely to enroll in college. Then-mayor Michael Bloomberg has since apologized for the practice.

Implicit bias on the part of officials within the criminal justice system and society at large remains a consistent concern. In a 2004 paper published by the American Psychological Association, survey respondents often associate African Americans with adjectives such as "dangerous," "aggressive," "violent," and "criminal." These negative stereotypes often resurface when minorities enter the criminal justice system. According to a report by the non-profit The Sentencing Project, "people of color are frequently given harsher sanctions because they are perceived as imposing a greater threat to public safety and are therefore deserving of greater social control and punishment."

Just as news photography and television brought the horrors of police brutality to American homes during the Civil Rights Era, technology today has played an important role in documenting and transmitting police interactions with minorities. The spread of video on mobile phones coupled with access to social media has allowed civilians to instantaneously record and share online any questionable interaction with law enforcement. Many of the recent shooting deaths of minorities, including Michael Brown, Tamir Rice, George Floyd, Jacob Blake, and others were captured by either private cell phone recordings or surveillance cameras. Additionally, many police departments have instituted body cameras on their officers which allow for videotaping of police-civilian interaction.

Even with these advances in public awareness, there remains a stark difference in the level of national attention paid to different racial groups when it comes to criminal justice discrimination. The rise of campaigns such as Black Lives Matter (see "Current Affairs and Looking Forward," below) in the last decade has brought to the national attention the police violence and discrimination faced by African Americans and Hispanics. Unfortunately, there has not been a similar level of attention paid to the discrimination faced by Native Americans. In a 2014 study, the Centers for Disease Control found that between 1999 and 2011, Native Americans were killed by police at almost the same rate as African Americans, making the two groups the most likely to be killed by law enforcement. When looking at the likelihood of being killed by police comparative to the overall population, the study found that Native Americans are actually more likely to be killed by police than any other racial group. Throughout the study’s timeframe, Native Americans were 3 times more likely to be killed by police than whites compared to 2.8 times for African Americans.

Yet, there is a noticeable under-reporting of Native American deaths at the hands of police. The killing of Allen Locke in 2014 by officer Anthony Meirose was barely reported outside of Rapid City.

16. Ibid.
24. Ibid.
25. Ibid.
where the incident occurred. The same lack of coverage held for the police killings of Native Americans Corey Kanosh in 2012, Mah-hivist Goodblanket in 2013, Jeanetta Riley in 2014, Daniel Covarrubias in 2015, and many more. Looking at coverage by the top ten U.S newspapers between May 2014 and October 2015, Claremont University researchers Roger Chin, Jean Schroedel, and Lily Rowen found consistent under or lack of coverage of Native American deaths by law enforcement. For example, whereas African American Sandra Bland’s death while in police custody received national coverage, the similar death of Native American Sarah Lee Circle Bear, in the same month as Bland’s death, went unreported. Chin, Schroedel, and Rowan found that of the twenty-nine Native Americans killed by police over the course of the study, only two received any media attention, and even then, only a combined 3,092 words were published on the two cases.

MASS INCARCERATION

Racial disparities in law enforcement only increase when minorities enter the justice system after being charged and/or convicted of a crime. African American males are imprisoned at nearly five times the rate of their white male counterparts, while African American women are twice as likely to be imprisoned compared to white women. In 2015, despite making up only 36% of the U.S. population, African Americans and Latinos accounted for 56% of the prison population. These disparities are caused in part by criminal justice policy and sentencing structures that disproportionately affect people of color. In the late 1960s and early 1970s, “law and order” policies such as the 1968 Omnibus Crime Control and Safe Streets Act resulted in the expansion of crimes that qualified for federal imprisonment and stricter prison sentencing, most notably for drug offenses. Influenced by initiatives like the “War on Drugs” and “Just Say No” campaigns, the 1980s saw a rise of harsher punishments for these offenses, which were disproportionately applied to African American and minority defendants. Despite the discrepancy in arrest rates, studies show that African Americans use drugs at similar rates to whites. Between 1995 and 2015, while African American males were imprisoned at nearly five times the rate of their white male counterparts, African American women were twice as likely to be imprisoned compared to white women. In 2015, despite making up only 36% of the U.S. population, African Americans and Latinos accounted for 56% of the prison population. These disparities are caused in part by criminal justice policy and sentencing structures that disproportionately affect people of color. In the late 1960s and early 1970s, “law and order” policies such as the 1968 Omnibus Crime Control and Safe Streets Act resulted in the expansion of crimes that qualified for federal imprisonment and stricter prison sentencing, most notably for drug offenses. Influenced by initiatives like the “War on Drugs” and “Just Say No” campaigns, the 1980s saw a rise of harsher punishments for these offenses, which were disproportionately applied to African American and minority defendants. Despite the discrepancy in arrest rates, studies show that African Americans use drugs at similar rates to whites. Between 1995 and 2015, while African American males were imprisoned at nearly five times the rate of their white male counterparts, African American women were twice as likely to be imprisoned compared to white women.
Americans comprised 13% of drug users, they accounted for 46% of drug arrests by 2005 and 29% of arrests by 2015.\textsuperscript{26}

Factors beyond disproportionate arrest rates also play a role in exacerbating mass incarceration rates of minorities. Once taken into custody, minority defendants face an uphill battle in bail and pre-detention decisions. Financial bail requirements often disadvantage African Americans, who typically have lower economic resources to pay. Once in front of the court, studies show that minority defendants often face stricter sentences than their white counterparts for the same crime. “Black and Hispanic offenders—particularly those who are young, male, and unemployed—are more likely than their white counterparts to be sentenced to prison than similarly situated white offenders,” according to The Sentencing Project.\textsuperscript{37}

A large analysis of studies on prosecutorial outcomes by University of Nebraska researcher Jawjeong Wu, published in 2016, found further support that racial minorities are disadvantaged in criminal proceedings.\textsuperscript{38} Wu’s analysis found that minorities were more likely to be charged and prosecuted compared to white offenders of similar crimes. While the extent of this discrepancy was dependent on the jurisdiction type, region of the US, and phase of prosecution (e.g. pre-trial or trial), it held constant that “an offender’s race and ethnicity did play a significant role in prosecutors’ decisions to file a charge or pursue a full prosecution.”\textsuperscript{39}

In addition to discrimination, limited opportunities in employment, education, and housing place minorities in vulnerable circumstances that create a cycle of structural disadvantage and exacerbate their over-representation within the criminal justice system. A study by The Sentencing Project found that “62% of African Americans reside in highly segregated, inner-city neighborhoods that experience a high degree of violent crime, while the majority of whites live in “highly advantaged” neighborhoods that experience little violent crime.”\textsuperscript{40}

Mass incarceration has negative outcomes for minorities even after their release. A criminal record typically complicates efforts by former convicts to secure employment, regardless of the type of conviction. In addition, a criminal conviction in many states precludes individuals from voting in federal or local elections. These hurdles, and the general social stigma attached to formerly imprisoned people, further entrenches minorities in systemic disadvantages.

While those caught up in the justice system face the primary effects of mass incarceration, their families and community also fall victim to the negative impact. In 2017, more than half of those incarcerated were parents of minor children, with African American children more than seven times as likely to have an incarcerated parent than white children.\textsuperscript{41} Children and spouses of incarcerated individuals face worse overall health outcomes compared to the general public.\textsuperscript{42}

SCHOOL-TO-PRISON PIPELINE\textsuperscript{43}

Beginning in the 1970s, the adoption of “zero tolerance”\textsuperscript{44} school policies has contributed to the rise in disciplinary action against young students. The vagueness of what zero tolerance means has led to any type of student misconduct, from minor dress code violations to violent action, being subject to discipline.\textsuperscript{45} Passage of the 1994 Guns-Free School Act and its vague classification


37. Ibid.


39. Ibid.


42. Ibid.

43. The National Education Association defines the school-to-prison pipeline as encompassing “the policies and practices that are directly and indirectly pushing students of color out of school and on a pathway to prison, including, but not limited to: harsh school discipline policies that overuse suspension and expulsion, increased policing and surveillance that creates prison-like environments in schools, overreliance on referrals to law enforcement and the juvenile justice system, and an alienating and punitive high-stakes testing-driven academic environment.” See “Discipline and the School-to-Prison Pipeline (2016).” National Education Association, https://ra.nea.org/business-item/2016-pol-e01-2/.

44. In the broader criminal justice framework, zero-tolerance policies and policing, in particular, refer to “the style of policing generally associated with the full and complete enforcement of all criminal violations, from minor infractions (such as disorderly conduct or public loitering) to major crimes (such as robbery and burglary).” (Source: “Zero Tolerance Policing.” Criminal Justice, http://criminal-justice.iresearchnet.com/system/zero-tolerance-policing/).

of what constituted a weapon meant that students faced year-long suspension whether they brought a gun to school or merely made a weapon gesture with their hands. Without any review mechanisms in place to investigate the circumstances of expulsions under this law, students had little to no recourse to appeal questionable expulsion decisions.

Minorities have borne the brunt of these policies. In 2014, the Department of Education found that while African Americans accounted for 16% of the student population, they represented 32% of students expelled or suspended, 27% of referrals to law enforcement, and 31% of school-related arrests. In general, African American students were expelled at three times the rate of white students with African American girls suspended at higher rates across all racial groups. In addition to disciplinary measures in schools, these practices have contributed to the disproportionate incarceration of minority youth, with African American youth five times more likely to be incarcerated compared to white youth.

Further exacerbating disciplinary outcomes has been the rise in outsourcing student misbehavior to juvenile courts and disciplinary officers. A 2015 report found that schools with student resources officers (SRO) had five times more student arrests and higher rates of student referral to juvenile correction centers. These referrals risk exposing children to the criminal justice system at an early age. Exacerbating this problem is that often principals have little to no input on the SRO hiring process, increasing the probability of hiring an SRO who is a poor fit for the school culture and student body. Principals are increasingly pressured by legislatures to use armed SROs, particularly due to the prevalence of school shootings. According to a 2013 report by the Congressional Research Service, only about 4% of school and law enforcement officials cited the presence of violence in school as the reason for hiring an SRO. Instead, 25% reported that pressure from national media about school violence was the primary motivation for acquiring an SRO. The most common motivation for both schools and law enforcement to start an SRO program was a combination of “received a grant to start the program,” “part of community policing efforts,” “part of a drug awareness program,” or “improve school safety.”

While some SROs have played crucial roles in preventing violence from armed students or intruders, such as the SRO in a Milwaukee high school that disarmed a student in time for the school to evacuate, there are troubling reports of aggressive actions towards students from SROs. In 2010, Derek Lopez, a San Antonio fourteen-year-old, was shot to death by an SRO who claimed the student fled after punching another student – the SRO was never indicted for the killing. In 2013, seventeen-year-old Noe Nino de Rivera suffered a brain injury and a fifty-two-day coma after he fell and suffered a brain hemorrhage when he was tased by an SRO while Rivera was attempting to break-up a fight. The SRO

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51. Ibid.


53. Ibid.


55. Ibid.

56. Ibid.


From the data that is known, Native youth are disproportionately represented in the juvenile justice system.

was not indicted and received a promotion in 2014. In 2015, a Louisville thirteen-year-old was punched by an SRO for cutting the lunch line, and later the same SRO was indicted for putting another teen in a chokehold causing the student brain injury.

Often missing from the discussion about juvenile detention are Native American youth. Nationally, there are few reliable data sources on Native youth detention or incarceration. This dearth of information is partly due to the unique exposure of multiple jurisdictions Native youth may be subjected to. Depending on factors such as type of infraction, location, and Native membership status of perpetrators or victims, Native youth can be detained or prosecuted by either tribal, state, or federal authorities. Poor or inconsistent communication between those entities means that data on overall Native youth detention is incomplete and the data that is captured is most likely an underestimate of the true population.

From the data that is known, Native youth are disproportionately represented in the juvenile justice system. Even excluding youth in Indian Country facilities, Native Americans comprise 3% of girls and 1.5% of boys incarcerated in juvenile detention facilities, despite making up less than 1% of the youth population. Similar to African Americans, Native Americans often face negative stereotypes of criminality that lead to harsher encounters with law enforcement and sentencing. Compared to white youth, Native youth are more likely to be arrested for low-level infractions like liquor law violations or lack of cooperation with law enforcement. When they are arrested, Native youth are almost twice as likely as their white counterparts to be referred to the adult criminal justice system or out-of-home placements like half-way homes or youth residential treatment centers.

While Native youth and other racial minorities face similar bleak statistics of detention, Native youth are further made vulnerable by the unique jurisdictions they may find themselves in. As mentioned earlier, Native youth can be prosecuted either at the tribal, state, or federal level depending on the nature of the offense and location. Under Public Law 280, commonly known as PL 280, states can claim expanded jurisdiction over crimes committed in tribal territories. Prior to PL 280, tribal communities shared criminal jurisdiction with the federal government. With the introduction of PL 280, states can exercise greater control in prosecuting crimes, including minor crimes, that were once handled by tribal authorities. Since tribal authorities can still prosecute offenders, in reality, this means that Native youth who commit crimes in PL 280 states can be prosecuted under both tribal and state law. In these cases, protection against double


63. Ibid.


66. Ibid.


68. Ibid.


jeopardy does not apply since “tribes have inherent sovereign powers that are not derived from the federal government. If a [Native] juvenile commits a crime in a PL 280 state, jurisdiction is shared by both the state and the tribe. Alternatively, if a non-[Native] juvenile commits a crime, jurisdiction rests solely with the state.”

In essence, Native youth face extra punishment for the same crime.

Disproportionately heavy-handed disciplinary action has a far-reaching negative impact on minority youth. In a 2007 study, the Centers for Disease Control found that youth transferred to the criminal justice system are 39% more likely to be re-arrested for violent crimes – further entrapping these youths in the criminal system and mass incarceration, and restricting further employment, education, and housing opportunities. For youth exposed to the criminal justice system at an early age, the opportunities for social and economic advancement are stifled before they even reach adulthood.

Psychologically, Native youth face an even greater long-term negative impact exacerbated by discrimination and limited opportunities. A 2013 report from the Office of Juvenile Justice and Delinquency Prevention found that Native youth experienced Post Traumatic Stress Disorder (PTSD) at the same rate or greater than military personnel who served in Afghanistan, Iraq, and the Persian Gulf. In 2019, the Centers for Disease Control reported that Native youth ages 15-29 have suicide rates more than twice the rates of white youth.

Academically, minority youth are also at a disadvantage. A 2016 paper by researchers at the University of Kentucky and Indiana University found a “punishment gap” relating poor academic outcomes between white and minority students and exposure to school discipline. Looking at 2008-2011 data of roughly 16,000 students in grades six to ten from seventeen schools, authors Edward Morris and Brea Perry found that about 20% of the racial achievement gap between African American and white students was related to harsher disciplinary punishments for African American students.

When looking at math scores, Morris and Perry found that for every suspension a student incurred within a school year there was an associated 16-point decrease in test scores compared to students that were not suspended. Additionally, every suspension incurred significantly lowered the math performance of the student compared to what the student was expected to achieve in the absence of a suspension. More sobering, these poor outcomes have a long-term impact on student academic achievement. Lower math scores incurred from early suspension continued for the entirety of the study period.

RACE AND HOUSING

The area of housing is one of the starkest examples of institutionalized racism still condoned at the federal level. The creation of the Federal Housing Administration (FHA) in 1934 exacerbated discriminatory housing practices – referred to as redlining – that for generations has excluded minorities, particularly African Americans, from realizing the American Dream of homeownership. On request by the Home Owners Loan Corporation in the 1930s, the FHA identified areas within cities in which the loan risk level was deemed sufficiently “safe” to provide loans. The areas deemed the riskiest were often minority communities, identified by literally drawing a red line around their borders. Since federal and private mortgage rates were awarded based on the deemed risk of the loan, this left minorities with little to no access to quality mortgages or homeownership in general.

Even supposed ‘race-neutral’ legislation had a negative impact on minorities seeking homeownership. The 1944 Servicemen’s Readjustment Act, commonly known as the GI Bill, allocated federal aid to help returning World War II veterans “adjust to civilian life in the areas of hospitalization, purchase of homes

71. Ibid.


76. According to the Department of Education’s National Center for Education Statistics, “Achievement gaps occur when one group of students (such as, students grouped by race/ethnicity, gender) outperforms another group and the difference in average scores for the two groups is statistically significant (that is, larger than the margin of error).”


78. Ibid

A 2018 randomized experiment found that among gender, racial, and ethnic categories, African Americans received lower than average response rates from landlords when inquiring about rental units.

and businesses, and especially, education. In the area of homeownership, the GI Bill provided federally guaranteed loans for veterans to purchase homes. Yet, African American veterans were unable to take advantage of these benefits since very few banks would lend them the remaining funding to purchase a mortgage. Even if African American’s were to secure a mortgage, their housing options were severely limited. Housing development projects and homeowners’ associations either implicitly or explicitly excluded African Americans from buying or living in their managed properties. As one report concluded, “FHA was subsidizing builders who were mass-producing entire subdivisions for whites — with the requirement that none of the homes be sold to African-Americans.” While white Americans were able to take advantage of growing suburban developments and financial incentives like the GI Bill, African Americans were once more left behind.

The lack of access to mortgages had a deep-reaching negative impact on African American and minority communities. Research in Chicago has shown a negative causal relationship between redlined areas and rates of homeownership, house values, and racial segregation. Looking across Chicago neighborhoods, the Federal Reserve Bank of Chicago found that redlining could account for 15-30% of the gap in African American homeownership between redlined and regular neighborhoods. The same study found that 40% of the discrepancy in home values could be attributed to redlining practices.

On the heels of the 1964 Civil Rights Act, Congress passed the 1968 Fair Housing Act, which outlawed all categories of housing providers, mortgage lenders, and financial institutions from discriminating against applicants on the basis of race (and other demographic categories), whether for rental or mortgage properties. Seven years later, the 1975 Home Mortgage Discrimination Act mandated that financial institutions disclose their lending practices in an effort to further identify and discourage discriminatory mortgage lending practices.

While the Fair Housing Act outlawed institutional housing discrimination, minorities continue to be at a disadvantage when seeking housing. In a 2018 randomized experiment, Judson Murchie and Jindong Pang found that among gender, racial, and ethnic categories, African Americans received lower than average response rates from landlords when inquiring about rental units. An earlier 2012 report by the U.S Department of Housing and Urban Development found similar trends: minorities often face informal hurdles to securing rental or mortgage properties. African Americans and Hispanics are told of fewer available units compared to whites when seeking rentals. Even when told of available units, minorities are required to provide more information about their credit qualifications, have longer wait times for viewings, and are less often told about rental incentives or discounts compared to non-minorities. In buying, for every three homes a non-minority applicant is shown, African Americans are shown only two homes, and are more likely to be shown homes with physical deformities.

82. Ibid.
85. Ibid.
86. Ibid.
90. Ibid.
91. Ibid.
92. Ibid.
Whether institutionalized or informal, housing discrimination has negative social, financial, and health impacts on minorities. When searching to buy, minorities are more likely to be steered by realtors to communities with lower-priced homes or to areas that reflect their perceived racial identity. This practice, worsened by the legacy of redlining in certain areas, can further segregate communities and limit upward mobility in neighborhoods where opportunity is scarce. In fact, living in segregated and improvised areas increases downward mobility for children as they have less access to quality educational and social support resources. Additionally, these neighborhoods typically have fewer healthy food options and less access to quality health services. Residents of poor-quality housing, often characteristic of low-income segregated neighborhoods, also experience higher incidents of vermin infestations, lead, and mold which can lead to health complications.

Since housing constitutes a large portion of generational wealth, lack of access to homeownership has stunted minorities’ ability to build net worth. In 2016, the net worth of a white family was about $171,000 compared to $20,700 for a Hispanic family and $17,600 for an African American family. This is compounded by discrimination in employment and other economic spheres, which further fuels inequality and contributes to the staggering current wealth gap. Richard Rothstein, author of Color of Law states, “today African-American incomes on average are about 60 percent of average white incomes. But African American wealth is about 5 percent of white wealth...most middle-class families in this country gain their wealth from the equity they have in their homes. So, this enormous difference between a 60 percent income ratio and a 5 percent wealth ratio is almost entirely attributable to federal housing policy implemented through the 20th century.”

For Native Americans, the issue of housing security takes on unique circumstances. For decades, Native communities have been fighting against violations of tribal sovereignty and federal encroachment upon tribal lands. The latest national controversy concerning tribal land was during the 2016 Standing Rock protests in which North Dakota Native activists and allies marched against the completion of the Dakota Access Pipeline through ancient burial lands and water reserves. Threats to their tribal lands are further compounded by sub-standard housing available within reservations. A 2017 report from the Department of Housing and Urban Development found that tribal communities experience far poorer housing conditions compared to all U.S households.

The report found that 23% of households in tribal communities “live in housing with a physical condition problem of some kind,” compared with 5% percent of all U.S. households; and 16% live in overcrowded housing compared to 2% of U.S households. These poor housing conditions are largely in part due to under-investment from federal agencies and resources for Native communities that have “declined more rapidly than for other federal housing programs.”

RACE AND EDUCATION

Although it wasn’t until 1964 that federal legislation began to respond to racially discriminatory practices in housing and other sectors, the landmark 1954 case of Brown v. Board of Education had already begun formal desegregation within public education. Brought about by African American parents forced to send their children to distant segregated schools rather than nearby white schools, the case deemed public school segregation unconstitutional and in violation of the Fourteenth Amendment’s equal protection clause. The ruling mandated that the “separate but equal” doctrine of Plessy v. Ferguson could no longer be applied

93. Ibid.


96. Ibid.


101. Ibid.

102. Ibid.
to public education even if the schools had similar facilities, stating: "Segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities, even though the physical facilities and other 'tangible' factors may be equal."103

The backlash to Brown was quick and vehement. Open defiance of desegregation orders by political leaders bolstered de facto segregation and continued to bar African American students from attending desegregated schools. In 1954, enraged by what they deemed as “abuse of judicial power” in the Brown ruling, 101 Southern congressmen signed the Declaration of Constitutional Principles, also known as the Southern Manifesto, pledging themselves “to use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation.”104

Although Brown outlawed segregation in public education, it provided neither a roadmap for desegregation nor a timeline for schools to desegregate. The question of ‘how’ to desegregate was the basis for the follow-up 1955 case Brown v. Board of Education of Topeka II. But even here, the Supreme Court was vague in implementation guidance, stating only that the ruling from Brown I should be enforced “with all deliberate speed” under the guidance and recommendation of local education authorities. In the face of vague Court and legislative guidelines, some school districts started to institute busing to comply with desegregation in still segregated neighborhoods. Essentially, students would be transported to schools outside their regular school zone in an effort to create more racially integrated schools. Not entirely surprising, some white parents revolted against the prospect of their students attending school in predominately African American neighborhoods.

Despite the 1964 Civil Rights Act and the Brown rulings, de facto educational segregation and discrimination continue today. A 2019 report found that despite serving the same number of students, there is an estimated $23 billion funding gap between minority and white school districts.105 Predominately minority schools have fewer physical and instructional resources than predominately white schools. Since public school funding is based on local property taxes and minority neighborhoods have lower property values, schools in minority areas receive less funding than those in wealthier, white neighborhoods. This lack

"Nine students leave Central High, Little Rock, Arkansas, under U.S. Army escort" | NYPL Digital Collections

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of funding results in lower quality teaching and instructional materials. As a Brookings study concluded, “schools with high concentrations of low-income and minority students receive fewer instructional resources than others... minority students with fewer and lower-quality books, curriculum materials, laboratories, and computers; significantly larger class sizes; less qualified and experienced teachers; and less access to high-quality curriculum.”

Partially in response to these inequalities, there has been a rise of charter schools that operate independently of public school systems with the aim of providing alternatives and opportunities for students supposedly failed by the public education system. However, a 2017 report by the Associated Press found that most charter schools remain highly segregated themselves.

Arising within the conversation on race and education is the use of affirmative action in school selection criteria, particularly within higher education. Broadly defined, affirmative action is “a set of procedures designed to eliminate unlawful discrimination among applicants, remedy the results of such prior discrimination, and prevent such discrimination in the future.” In its landmark 1978 Regents of the University of California v. Bakke the Supreme Court deemed it constitutional for public higher education institutions to utilize race in their selection criteria. A white student, Allan Bakke, had sued the University of California Davis School of Medicine’s affirmative action quota policy after he was rejected three times, claiming that the policy violated equal protection rights of white students. While the Court deemed that including race in selection criteria was acceptable since diversity was in the interest of the state, instituting racial quota systems, like that of UC, was unconstitutional.

This distinction of using race as a factor of admission rather than a cause of admission would be argued for decades in subsequent Supreme Court cases. Two prominent cases in 2003, Gratz v. Bollinger and Grutter v. Bollinger, and 2016 Fisher v. University of Texas further differentiated these two criteria and highlighted the need for strict scrutiny in race-based methods. In Gratz, the Court ruled against the University of Michigan’s undergraduate admissions practice of assigning points to applicants based on race. However, in Grutter and Fisher, the Court ruled in favor of each respective school noting that race was just one of many factors assessed and did not on its own sway admission outcomes.

Despite these court rulings, affirmative action continues to be a contentious issue. Critics of affirmative action argue that past discrimination of minorities does not justify present discrimination, particularly of white students. Additionally, critics argue that affirmative action actually harms the groups it is meant to serve by insinuating that they cannot succeed without federal action. There is also the claim that affirmative action discriminates against other non-African American minorities. In 2019 Students for Fair Admissions sued Harvard University in federal court arguing that the school’s affirmative action policies were discriminatory towards Asian-American applicants. The District Court ruled in favor of Harvard, finding that its admissions process met constitutional requirements.

**RACE AND THE LABOR MARKET**

Civil Rights activists in the 1950s and 1960s placed specific emphasis on racial discrimination in employment. Labor union and worker’s rights played complementary roles in the larger civil rights movement, with leaders like Dr. Martin Luther King, Jr., viewing equal access to work as a core requirement of equal protection and equal opportunity. With the signing of the 1964 Civil Rights Act, the country seemed closer to eliminating employment discrimination. Title VII of the Civil Rights Act made it unlawful for employers to discriminate against applicants or employees on the basis of race and mandated the Equal Employment Opportunity Commission (EEOC) to ensure that such protections were adhered to.

A year later, President Lyndon Johnson’s Executive Order 11246 further specified that any contractor doing over $10,000 worth of business with the U.S government was not only barred from discriminating against individuals but was also required to “to take
affirmative action to ensure that equal opportunity is provided in all aspects of their employment.”

As with most issues discussed in this chapter, legal protections against discrimination have been enacted, but de facto discrimination remains. A 2018 report by the Bureau of Labor Statistics highlighted the inequalities still present in the labor market.\(^{116}\) Compared to the national unemployment rate of 3.9%, Native Americans, African Americans, and Pacific Islanders faced higher rates of unemployment with 6.6%, 6.5%, and 5.3% respectively, while African Americans and Asians experienced longer periods of unemployment. African Americans and Hispanics continued to have the lowest salaries, with wage disparities across all sectors. While a white full-time employee earned on average $890 weekly, African Americans earned $694, Hispanics earned $680, and Asians earned $1095.

Minorities are at a disadvantage from the beginning of the employment stage. Studies conducted in 1990 found that white applicants received 36% more employer calls for initial interviews than African Americans and 24% more calls than Latinos.\(^{117}\) A 2017 Harvard Business School study found that there has not been a significant change in these discrepancies even when controlling for other variables such as education and gender.\(^{118}\) Other studies have shown that resumes with white sounding names are 50% more likely to receive callbacks than identical resumes with African American sounding names – an advantage equivalent to having eight more years of work experience.\(^{119}\)

The EEOC is the agency tasked with fulfilling the mandate of Title VII. In the fiscal year 2017, the agency received over 28,500 raced-based complaints, excluding those filed at state or local agencies,\(^{120}\) with a slight decrease to 24,500 complaints in the fiscal year 2018. The magnitude of complaints coupled with lack of resources has made it difficult for the EEOC to effectively carry out its mandate. When adjusted for inflation, the EEOC has the same budget it had in 1980, with less staff, and significantly more complaints to investigate.\(^{121}\)

Despite the challenges of de facto discrimination and an overburdened EEOC, removing workplace protections may cause more harm than maintaining the status quo in enforcement. A 2013 report looking at local and state governments that repealed employment affirmative action found that representation of minorities decreased. The three groups most negatively impacted were Asian and African American women and Hispanic men who respectively saw 37%, 4%, and 7% decreased representation within the government workforce.\(^{122}\)

**RACE-BASED HATE CRIMES AND SOCIAL MOVEMENTS**

Hate crimes targeting African Americans and other minorities are a continuing aspect of U.S. history. From early Supreme Court rulings such as *Plessy v. Ferguson* to Jim Crow, racial discrimination was both implicitly and explicitly supported and promoted at every level of society and government. Predominately southern hate groups like the Ku Klux Klan (KKK), the White League, and the Red Shirts, openly terrorized and murdered African Americans without fear of prosecution. Their white supremacist ideology gained further prominence during post-Reconstruction and Jim Crow when southern whites felt their “racial purity” threatened by the expanding rights for African Americans (See also, “Hate Crimes”).

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118. Ibid.


African Americans continue to experience higher levels of race-based hate crimes than other groups. A 2019 study found that African Americans have 30 to 40% higher rates of victimization and Hispanics 10% higher rates compared to whites.\(^{123}\) Hate crimes committed against African Americans tend to be more violent and lead to more serious injury.\(^{124}\) The 2015 shooting deaths of nine African American parishioners in a Charleston church by a white supremacist echoed the deadly church attacks in the Jim Crow South. In 2019, 22 predominately Latino shoppers were killed by an anti-immigrant white supremacist in an El Paso, TX Walmart.

The 2016 election of Donald Trump further brought race-based hate crimes and discrimination to the fore. Edwards and Rushin (2018) found a statistically significant relationship between Trump’s election and the increases in hate crime reporting.\(^{125}\) The study shows that incendiary and racist language by candidate-then-president Trump emboldened racists to express their views. The study also found a correlation between a rise in hate crime reporting and counties where Trump campaigned and won by large margins on election night.

The growing role of technology further fuels racist ideas and actions. White supremacists have used subversive and anonymous web platforms to create online communities to propagate their ideology.\(^{126}\) One notorious site, 8chan, had been repeatedly shut down for hosting racist online communities and providing a platform for white supremacist killers like the one in El Paso to post their ‘manifestos.’\(^{127}\) Mainstream social media sites are also accused of playing a role in spreading race-based hate. Large networks like Facebook and Twitter provide largely unmoderated platforms for hateful expression that is quickly shared by millions. Researchers at Iowa State University found a strong correlation between elected officials who publicly engage with “anti-minority” users on Twitter and an increase in hate crimes within the officials’ district.\(^{128}\)

**SOCIAL MOVEMENTS AGAINST RACIAL DISCRIMINATION**

As racial disparities continue to gain national prominence so has public activism against racial discrimination. A national social movement rallying against systemic racial discrimination and criminal justice reform, Black Lives Matter (BLM) began in 2013 as a social media reaction to the acquittal of a white man for the shooting death of 14-year-old African American Trayvon Martin.\(^{129}\) BLM engages in local protests against specific cases of police brutality and mass protest against systemic discrimination within the criminal justice system. During the 2016 presidential election, BLM activities successfully brought police brutality and criminal justice reform to the national spotlight, forcing candidates to explicitly outline their policies on related issues.

The sports and entertainment industry also took part in highlighting racial disparities in modern society. In 2016, National Football League (NFL) African American player Colin Kaepernick publicly took a knee during the national anthem to protest police violence against African Americans. However, the topic of police brutality was minimized by Trump Administration officials and supporters in the media who accused Kaepernick of being disrespectful to the flag and law enforcement. President Trump went so far as to call upon NFL owners to fire players that followed Kaepernick in not standing for the anthem.\(^{130}\)

Ironically, the Kaepernick incident brought to question the relationship between race and the right to protest and whether the public reaction would have been different had Kaepernick not been African American protesting in a league of predominantly African American players but whose team owners and fans were predominantly white. Notably, players in the National Basketball Association (NBA) and the Women’s National Basketball Association (WNBA) did not face the same backlash for organizing protests as did NFL players. Compared to the NFL, NBA and WNBA leadership have openly supported their players’ right to protest, including allowing teams to add social justice messaging.

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124. Ibid.


to their courts and jerseys. In the wake of the police shooting of Jacob Blake in Wisconsin in August, the Milwaukee Bucks lead a three day game suspension of the NBA playoffs to focus on how players and the league can mobilize against police violence towards minorities. This game protest inspired similar action by teams in the WNBA, Major League Baseball (MLB), and sporting events across the world.

In the same year as Kaepernick’s protest, the film and television industry were also facing mounting scrutiny over its racial and gender parity. Popularized on Twitter, #OscarsSoWhite highlighted the disproportionate hiring and pay opportunities between white and minority talents. The protests took particular aim at the lack of minority nominations within the Oscars. Three years after #OscarsSoWhite, the number of nonwhite male and female leads in released films rose, with double the number of nonwhite male leads in films released in 2019.

**RACE AND THE COVID-19 PANDEMIC**

Examined separately, the barriers faced by minorities in all of the sectors considered in this report are enormously discouraging. The picture becomes even bleaker, however, considering how interconnected these issues are and how discrimination in one sector of society can lead to decreased opportunities and poorer outcomes in other sectors. For example, a teen thrust into the criminal justice system at a young age misses out on academic progress which has been shown to promote social mobility; her early exposure to juvenile detention is more likely to lead her to incur a criminal record which then limits her employment opportunities, which itself limits her ability to afford adequate housing and larger financial resources.

In conversations about racial inequality, it is easy to focus on one aspect of discrimination without recognizing the overall impact that discrimination has on a person’s life. Surprisingly, the COVID-19 pandemic has provided a unique opportunity to see the entrenched impact that discrimination has on minority wellbeing and opportunities. Since the pandemic is novel and still in progress, definitive data on long term outcomes are understandably not available. However, early data show discouraging evidence that structural and de facto discrimination is resulting in a disproportionately negative impact on minorities.

In the absence of a vaccine or cure, the prevailing precaution against contracting COVID-19 is to exercise social distancing and limit contact with the public and if suspected of infection, practice self-isolation within the home. For racial minorities, living conditions make these precautions hard or impossible to implement. As discussed earlier, minorities are more likely to live in sub-par housing and densely populated areas that make social distancing hard. As some minority groups are more likely to live in multi-generational households, the Centers for Disease Control warn that these communities may find it harder to protect older members who are more susceptible to COVID-19 or practice home isolation in the event of infection. Furthermore, segregated communities that are further from health centers, supermarkets, and other services make accessing health care and stocking up on food and necessities harder for individuals to adhere to stay-at-home precautions.

While no conclusive empirical data is yet available, anecdotal data suggests that there has been a rise in racist acts against Asian Americans. As COVID-19 is believed to have originated in China, Asian Americans, particularly Chinese Americans, have been targeted in hate crimes as the cause of the pandemic. In a report by the Asian Pacific Policy and Planning Council, it was found that between February and March 2020, there was a 50% increase in news articles about discriminatory attacks related to COVID-19 against Asians. Unfortunately, these racist beliefs are perpetuated by irresponsible rhetoric from Republican political officials and legislators. While the World Health Organization has repeatedly advised against referring to COVID-19 by its origins, political leaders including President Donald Trump have repeatedly referred to the virus as the “Chinese” or “Wuhan” (referring to the Chinese province where the first infections were
recorded) virus. Such rhetoric risks validating racist narratives that Chinese people are somehow responsible for the pandemic. While much of the workforce has been ordered to stay home to slow the spread of COVID-19, those deemed ‘essential workers’ were still required to work and engage with the public. Essential worker positions include those in the service industry (workers in supermarkets), mass transit, manufacturing, and maintenance work. Estimates from the Centers for Disease Control suggest that roughly a quarter of essential worker positions are occupied by African Americans and Hispanics compared to 16% occupied by white workers. Lack of personal protective equipment and exposure to the public leave these workers at greater risk of COVID-19 infection.

Those in the prison system also face a higher risk of infection. As discussed in the criminal justice section, minorities are disproportionately represented in the prison system. Early numbers indicate that prisons have a higher COVID-19 infection rate than the general public due to the close proximity of prisoners and staff. In New York City’s correctional facilities, the infection rate of those in custody as of May 2020 was over 9% compared to an infection rate of 1.77% for New York state and 0.43% nationally. In the first half of the fiscal year 2020, the NYC Department of Corrections reported that of those in its custody, 55.2% were African American, 32.5% Hispanic, 7.1% white, 1.5% Asian.

Minorities have also suffered from higher infection rates compared to the general public. In Louisiana, while African Americans are only 32% of the population, they account for at least 70% of deaths from COVID-19. In Michigan, African Americans make up only 13% of the state population but account for 40% of deaths from the disease. Compared to whites, African Americans in Chicago are dying at six times the rate of white patients and in New York City, Hispanics and African Americans are twice as likely to die from COVID-19 than whites. Nationally, African Americans account for only 14% of the population; of the 21,500 coronavirus deaths whose ethnicity was reported by April, 30% were African American. In late August, the CDC reported that Black Americans were 2.1 times more likely and Native Americans were 1.4 times more likely than whites to die from COVID-19. The discrepancies in infection and mortality rates are especially pronounced within the Native American community. Generally, poor health outcomes coupled with systemic inequality and resource-starved tribal communities have left Native Americans more vulnerable to the health and economic consequences of COVID-19. Native Americans already have a shorter life expectancy, disproportionate disease burden, and more than 1.3 higher mortality rate compared to the general U.S population. For decades the Indian Health Service (IHS), the Department of Health agency responsible for providing health services to Native Americans and Alaska Natives, have been under-funded, threatening its ability to provide services to Native communities. In 2018, IHS had half the funding of health services in prisons and a fraction of the Medicaid budget.

146. Ibid.
147. Ibid.
The presence of COVID-19 has acted as an unexpected magnifying glass exposing the depth and overarching injustice that racial discrimination forces upon minorities.

Lack of federal support in health services has led to skyrocketing infection rates within Native tribes. By mid-April, the Navajo Nation has a per capita infection rate ten times higher than the state of Arizona and the third largest infection rate in the country. With no support from the federal government, the Navajo Nation had to utilize an estimated $4 million from its own budget in an attempt to slow the spread of infection.

For most racial minorities, underlying health inequities and lack of access to health care make them more susceptible to complications from COVID-19. The Centers for Disease Control found that Hispanics are nearly three times more likely and African Americans twice as likely to be uninsured than whites. As health insurance is typically gained through employment, higher un-or under-employment within minority communities results in higher rates of lack of insurance. This is compounded by higher rates of chronic illness within minority groups that further make these communities vulnerable to COVID-19. Additionally, stigma and distrust towards the health system due to historical discrimination discourages minorities from seeking medical help and thus further increasing their vulnerability to COVID-19 infection and mortality.

The presence of COVID-19 has acted as an unexpected magnifying glass exposing the depth and overarching injustice that racial discrimination forces upon minorities. From every angle, minorities face greater vulnerability and worse outcomes as a result of discrimination.

CURRENT AFFAIRS AND LOOKING FORWARD

In one act of legislation, the 1964 Civil Rights Act brought about comprehensive anti-discrimination protections never before seen in the United States and opened the door for further federal protections in the years to come. Unfortunately, in recent decades there have been concerted efforts, both at the federal and local level, to undermine anti-discriminatory protections.

CRIMINAL JUSTICE

Despite an overall troubling picture of rights erosion in the past decade, an area where the federal government has made relatively progressive headway is that of criminal justice reform.

To a great extent, criminal justice reform has made such great gains due to the “trans-partisan” efforts of unlikely partners. As described by Johns Hopkins researchers David Dagan and Steven Teles, ‘trans-partisanship’ is an agreement on policy goals driven by divergent, deeply held ideological beliefs. This is very different from bipartisanship, in which established institutions facilitate compromise by bringing two sides together to split the difference with “grand bargains” brokered by party leaders. Trans-partisanship, by contrast, is typically led by ideological true-believers on the back benches, and distinct factions that converge on shared policy positions through separate, independent routes.

In criminal justice reform, this trans-partisanship is exemplified by the coalition between Evangelical conservatives and liberals. From the liberal perspective, criminal justice reform has been a matter of rectifying structural racism that disadvantaged minorities. For Evangelicals, reform has been a matter of providing religiously motivated redemption for offenders. Conservatives, especially libertarians, saw mass incarceration as an example of big government over-reach and reform as an avenue to more limited government.

Based on those beliefs, prominent conservative and Republican politicians, such as Newt Gingrich and George W. Bush, helped to pass federal legislation for prison reform in the 2000s. For example, the 2008 Second Chance Act provided for greater community support resources for the formerly incarcerated. These early
and unlikely alliances would prove to be crucial to the passage of future legislation under both the Democratic administration of Barack Obama and the Republican administration of Donald Trump.

In 2010, then-president Obama signed into law the Fair Sentencing Act. The law decreased sentencing disparities between crack cocaine and powder cocaine from a 100:1 to an 18:1 ratio. 

Despite the two forms being the same drug, possession of crack cocaine had considerably more severe sentencing than the powder form. This disparity in sentencing negatively impacted African American and minority communities who were more likely to use crack cocaine compared to powder cocaine.

The Fair Sentencing Act repealed mandatory minimums for simple crack possession. Importantly, the law was made retroactive in 2011, allowing around 25,000 individuals (85% of whom were African American) to have their cases of crack cocaine possession reviewed by judges.

Eight years later, in 2018, President Trump passed into law the First Step Act aimed at reducing recidivism and modest reform for mandatory minimums. A major highlight of the First Step Act is its reform on mandatory minimums for drug offenses. The law increased the threshold of prior convictions needed to impose mandatory minimum sentencing and reduced mandatory minimum terms from twenty years to fifteen years and from life imprisonment to twenty-five-year sentences. These changes to sentencing rules were made retroactive. The law also expanded the ‘safety value,’ which allows courts to sentence low-level, nonviolent drug offenders with minor criminal histories to less than the required mandatory minimum for an offense.

Additionally, First Step Act mandated that the Attorney General outline assessment tools and metrics for the Bureau of Prisons (BOP) to identify prisoners at risk of recidivism and implement intervention programs to reduce recidivism. The law further expanded BOP’s ability to provide resources for formerly incarcerated individuals to access federal and state benefits upon release. In an effort to keep inmates closer to their families, the law also stipulated that prisoners be housed in as close proximity to their areas of residence as feasibly possible. To track compliance of these guidelines, the law called for Congressional oversight of compliance by the Department of Justice and stipulated near yearly review of compliance for the next several years.

On the state level, criminal justice reform has succeeded through a careful reframing of the issue. In certain Republican states, officials have taken up the cause for reform less because of racial discrimination, and more as a form of so-called “justice reinvestment.” Justice reinvestment (JRI) aims to reinvest money from prison expansion into preventive and rehabilitative services for low-level offenders to decrease the costs incurred by states in maintaining a large prison population. In essence, JRI looks at the bottom-line fiscal costs of mass incarceration and seeks alternative ways to that money while maintaining accountability of offenders.

Similar to the ‘trans-partisan’ alliance of Liberals and Evangelists orchestrated by Colson, JRI’s origins can be traced to the liberal-leaning Open Society Institute while its continued success lies in partnerships between the Council for State Governments, the Vera Institute of Justice, and the Pew Charitable Trusts. These groups have provided states with funding, research, and technical expertise “to cut spending and reinvest savings in practices that have been empirically shown to improve safety and hold offenders...”


164. Ibid.


166. Ibid.

167. Ibid.

168. Ibid.


170. Ibid.


accountable within their state criminal justice systems. Such initiatives include better guidelines on pre-trial release, increased resources to community supervision centers, and implementation of evidence-based programming to reduce recidivism.

Unfortunately, while federal and state action has been steadily increasing for criminal justice reform, the same cannot be said for juvenile justice reform. In this arena, the changes that have occurred have mostly been seen at the state rather than the federal level, creating a patchwork of reforms rather than a comprehensive overhaul. In 2019, fifteen states ended mandatory adult prosecution for youths, although local authorities still maintain some discretion in prosecuting youth under eighteen as adults. Some states, such as Michigan, have raised the minimum age of eligibility to be prosecuted as an adult from seventeen to eighteen. Others have also raised the age for referral into the juvenile justice system – North Dakota raised the age of referral from seven to ten years old.

Whether at the federal or state level, criminal justice reform remains a salient issue. Grassroots movements like Black Lives Matter and outspoken celebrity involvement like those of Kim Kardashian West and Meek Mills have brought more widespread attention to the issue. Looking forward, increased attention to drug policy reform may be the next frontier in criminal justice reform. Specifically, there may be large-scale impacts on sentencing and overall imprisonment trends as the country contends with the topic of criminality around marijuana and especially as states begin to decriminalize marijuana use.

In 2019, HUD proposed changing its public housing assistance policies regarding mixed- families – families in which there are one or more members who are ineligible for public housing assistance because of their immigration status. Currently, individuals can apply for and receive public housing assistance without identifying the immigration status of those ineligible as assistance would merely be prorated to account for those in the household with legal immigration eligibility.

### HOUSING

The backsliding of protections has been especially noticeable within federal housing rights. Since the start of the Trump Administration in 2016, the Department of Housing and Urban Development (HUD) has taken a noticeably different approach towards utilizing its federal clout to advance housing protections, particularly for minorities. In 2018, HUD began to scale down the federal investigation into public allegations of discrimination from banks, realty agencies, insurance companies, etc. in preventing access to equal housing. One measure in this decrease of HUD involvement is the use of ‘secretary-initiated complaints’ which allows the HUD Secretary to directly open investigations on allegations of housing discrimination. Under the second term of George W. Bush, HUD utilized that power on average five times a year; during the Obama Administration the power was utilized on average ten times a year; however, the current HUD Secretary, Ben Carson, has only utilized this power once.

In 2019, HUD proposed changing its public housing assistance policies regarding mixed- families – families in which there are one or more members who are ineligible for public housing assistance because of their immigration status. Currently, individuals can apply for and receive public housing assistance without identifying the immigration status of those ineligible as assistance would merely be prorated to account for those in the household with legal immigration eligibility.
The proposal, yet to be passed, would bar housing assistance to any family where even one person was ineligible due to immigration status. The National Low Income Housing Coalition estimated that this change would impact about 25,000 households with a total of over 100,000 individuals. They estimated that those impacted would be disproportionately minorities, women, and children. Of those estimated to be impacted, 95% would be persons of color (of the 95%, 85% are estimated to be Hispanic), 56% are female, and 53% are children. Under the proposed rule, families would be forced to decide whether to forgo housing assistance all together or break up their family unit to remove those ineligible due to their immigration status.

Additionally, the proposal requires more extensive documentation to prove immigration eligibility. This additional barrier not only impacts immigrants but also citizens who do not have easy access to documentation to prove their immigration status. A 2006 study found that low-income and elderly Americans have a harder time accessing and producing required citizenship documents (ex. passports). This could mean that even American citizens are denied housing assistance simply for not having the right paperwork.

Also, in 2019, HUD proposed to revise the 'disparate impact' clause in allegations of housing discrimination. From a legal perspective, disparate impact "recognizes housing discrimination against race, gender or disability can be unintentional... often that’s the case with race-neutral policies — they can perpetuate segregation and racism." In the 2015 case of TX Dept. of Housing and Community Affairs v. Inclusive Communities Project, the Supreme Court upheld disparate impact as viable under the Fair Housing Act with Justice Kennedy opining, "recognition of disparate impact liability under the FHA also plays a role in uncovering discriminatory intent: It permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment."

184. Ibid.

185. Ibid.


Under HUD’s proposal of removing disparate impact considerations, the burden of proof to show housing discrimination is significantly raised for plaintiffs who bring allegations against banks, insurance companies, and other institutions in the housing market. Procedurally, this policy would shift from a three-part to a five-part burden of proof threshold for plaintiffs.189 This proposal would also absolve external and private entities from the responsibility of any discrimination committed as a result of algorithm, technology, or AI biases within their selection or reporting mechanisms.190 This ruling raises the question of who then would be responsible for algorithm bias considering these programs do not build themselves.

Most recently in 2020, HUD has initiated rollbacks of Obama-era legislation that required local governments to actively push for fair housing behavior by examining and reporting on housing patterns, community access, and other measures intended to equally distribute housing access.191 Justifying these measures, HUD Secretary Carson noted that these reporting guidelines were too burdensome for local authorities.192 This change, however, could potentially cause more lax local fair housing enforcement and fewer data on the nationwide status of fair housing practices for future policy considerations.

In a small bright spot for racial justice, recent federal legislation in response to COVID-19 has allocated additional funding towards housing protections for Native American tribal communities. The 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act allocated $200 million to Indian Housing Block Grants and “an additional $100 million for Native American housing programs that will likely be allocated based on need.”193

EDUCATION

Under the guidance of Secretary Betsy DeVos, the Department of Education (DOE) has steadily weakened or eliminated existing policies and guidance to promote equity across America’s schools. In 2018, the DOE revoked guidance for schools meant to rectify the disparity between disciplinary action taken against students of color compared to white students.194 During Congressional testimony, DeVos avoided nearly all questions on the DOE’s failure to protect minority students from heavy-handed discipline.195

Secretary DeVos has been a staunch proponent of ‘school-choice’ and has used her position to further advocate the use of federal funds to support private and religious education institutions and parent’s ability to enroll their children in such institutions.196 DeVos openly supported the decision in Espinoza v. Montana Department of Revenue in which the Supreme Court ruled that taxpayer dollars can be used to fund voucher programs for private and religious schools.197 By diverting funds away from public schools, the ruling disproportionately impacts racial minorities in districts already struggling with funding issues.

Despite the ongoing COVID-19 pandemic, President Trump was vocal about re-opening schools for in-person learning by July 2020, including threats to withhold federal funding from schools who chose remote learning for the fall term.198 While he has not acted on these threats, such an action would most impact schools in majority Black and Hispanic districts which more heavily dependent on federal assistance for funding.199

In the midst of these actions from the Trump Administration, the topic of affordable and equitable access to education was


190. Ibid.


192. Ibid.


199. Ibid.
a prominent topic during the 2020 presidential race. Most Democratic candidates outlined some form of policy on access to education, ranging from free community college for all to extending current federal financing options to cover more students.\textsuperscript{200}

### A NEW CONVERSATION ON RACIAL EQUALITY

The topic of racial discrimination and systemic discrimination catapulted to the top of the agenda during the 2020 presidential election. While the Republican and Democratic presidential nominees are white men, the 2020 election cycle saw the most diverse pool of presidential candidates in American history, with two African Americans, one Hispanic, one Asian, and one Samoan American vying for the Democratic party nomination.\textsuperscript{201} In August, with her nomination as Vice President by the DNC, Kamala Harris became the first African American woman and person of Indian heritage on a presidential ticket.

While COVID-19 became the dominant policy issue, racial justice has become one of the defining issues of the 2020 election and one that intersects other areas such as criminal justice reform, education, affordable housing, and other concerns. The killing of George Floyd in May spurred ongoing national protests and calls to action to end discrimination against African Americans, not only in law enforcement but across all sectors of society. Social media has allowed for greater scrutiny and awareness of businesses and individuals that discriminate against African Americans and other racial minorities; further amplifying calls for nationwide reckoning of racial injustice.\textsuperscript{202}

Data from the 2020 Harvard Carr Center/Institute of Politics poll show encouraging trends on the saliency and perceived importance of racial justice amongst Americans. Majories of Republican (52%), Democratic (67%), and Independent (54%) respondents believe that “racial diversity makes the U.S. stronger. Across all political affiliations, 77% agree that equal treatment of all is necessary for the country to reach its full potential and 81% believe racial equality is “very important to being an American today.”

Despite the immense structural barriers to racial equality, surveys such as this one suggest that Americans are more attuned to how the next president and public officials handle issues that impact racial minorities and address inequality. Increased social awareness and mobilization around police brutality, systemic discrimination, reparations, and other issues have inspired the nation toward more nuanced conversations and forced public officials, including the next president, to outline policy proposals to address these problems.

### POLICY RECOMMENDATIONS

### HOW TO REIMAGINE RIGHTS AND RESPONSIBILITIES:

- **Require Opportunity Impact Statements.** Require federally funded programs and projects to have Opportunity Impact Statements to ensure anti-discriminatory practices and equal access and opportunity for racial minorities.

- **Reform Law Enforcement and Strengthen Public Safety.** Public safety reforms should be designed and implemented to redefine law enforcement, increase funding of social services, abolish “qualified immunity” (which shields police officers from accountability through civil liability), demilitarize the police, prohibitchokeholds and "no-knock" unannounced searches, eliminate racial discrimination in policing, and bar police unions from blocking disciplinary actions against police officers. The call for “defunding” should not mean abolishing the police but shifting some funds to social service agencies that can perform non-law enforcement functions currently assigned to police such as mental health care, drug treatment, homeless assistance, community mediation, and restorative justice. Public safety and racial justice would be advanced by making greater investments in communities that have been ravaged by violence and a discriminatory justice system.

- **Reduce Mass incarceration.** Review and reform federal and state sentencing codes and procedures to reduce mass incarceration and provide alternatives to imprisonment. The US is an international outlier on incarceration, holding 22% of the world’s prisoners with only 4% of the world’s population. The US imprisons more than two million people in federal and state prisons and jails, 56% of whom are Black and Hispanic.

- **Enact Legislation Allowing Proof of Disparate Discriminatory Impact.** In cases seeking remedies for racial discrimination in housing, employment, education, and health care, allow proof of the disparate impact of policies and practices on racial minorities, and eliminate the requirement of proving that the discrimination was specifically intended by those responsible for the policies and practices that caused it. Congress should enact explicit, actionable disparate impact protections in areas like criminal justice and environmental siting where inadequate protection against racial discrimination now exists.

- **Reform Education Funding.** Establish federal requirement to disconnect public school funding from local property taxes and provide federal funding to eliminate disparities in school district zones resulting from differential property tax bases.

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• **End Employment Discrimination.** Strengthen federal anti-employment discrimination enforcement and increase funding for job training programs and access to employment community services.

• **End Housing Discrimination.** Strengthen federal authority to oversee local officials and private parties on fair housing practices and improve renter protections to prohibit discrimination based on public assistance status.

• **Authorize Reparations.** Provide public community development investments in African American and Native American communities that have historically been denied economic opportunity and equality as a result of federal policy (e.g. slavery, removal, and more recently, redlining, land seizure). Establish a National Truth Commission to provide an official US apology to acknowledge, document, and recommend remedies for historic and continuing systemic racism in the United States.