

New Errands:

The Undergraduate Journal of American Studies



2020 Special Issue:
Crime and Inequality in America

Welcome to New Errands!

The Eastern American Studies Association and the American Studies Program at Penn State Harrisburg are pleased to present the Summer 2020 Special issue of *New Errands*, an online journal that publishes exemplary American Studies work by undergraduate students.

Seeking to develop the next generation of Americanists, *New Errands*' mission is both to provide a venue for the publication of important original scholarship by emerging young scholars and to provide a teaching resource for instructors of American Studies looking for exemplary work to use in the classroom.

New Errands is published semi-annually, after the end of each academic semester. The goal of this timetable is to collect and publish essays produced during the previous term, so that they can be made available as quickly as possible for use in the following term. We encourage both self-submission by undergraduate students and nominated submissions by instructional faculty. Essays must have an American focus, but can employ a variety of disciplinary methods. Submissions can be emailed as Word documents to: newerrandsjournal@gmail.com or submitted directly through the *New Errands* website.

Essays can be of any length, but they must have a research focus. Any visual images should be placed at the end of the manuscript, and tags should be placed in the text to indicate the intended placement of each image. Manuscripts should conform to Chicago guidelines.

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For further information about the Eastern American Studies Association, including the annual undergraduate roundtable and the EASA undergraduate honors society, please visit: <http://harrisburg.psu.edu/eastern-american-studies-association>.

A Message from the Guest Editors—

This special issue focuses on structural violence and invisible inequalities that have plagued the United States since its inception, but which have again been foregrounded in the post-2016 United States. In bringing together outstanding undergraduate essays submitted to the Marginalized Voices conference, held at Penn State Harrisburg on Oct. 29-30, 2019, it reflects a special concern with law and policy, race and racism, and equality across several areas of American life, and serves as a welcome reminder that to “do” American Studies means to engage with all the things that “make” America. In similar vein, the issue implicitly acknowledges the truly interdisciplinary nature of American Studies, drawing as it does from separate fields (School of Public Affairs, Behavioral Science and Education) even as its contributors get to the heart of the United States’ deeply problematic relationships with the very peoples that are its constituents.

No study of American history or culture would be complete without confronting how deeply injustices are imbricated in both. Here, in analyzing the nature of inequality, crime, and punishment in the US from both diachronic and synchronic perspectives, the contributors have also suggested concrete ways to address the injustices that are part of the fabric of US life.

The very nature of a discipline creates silos and distinctions within the academic arena. However, the incorporation of interdisciplinary activities enables the student to apply their disciplinary and non-disciplinary knowledge to a particular situation. This foundation creates a well-rounded student able to critically process social issues from various avenues. This was one of the main reasons for this project.

Three of the articles call into question the disparities historically and culturally embedded within society. The article written by Billingsley highlights the historical intersections between race, social institutions, and the law for African-Americans in relationship to punishment and disenfranchisement.

Mohandeo explores the true political incentives for locating minority prison populations within rural areas. Adhikari, Hanula and Ryan call into question the inequalities that exist in medical marijuana programs.

Other contributions pierce the veil of specific aspects within social institutions (post-secondary education and criminal justice), and the impact each has had and continues to have on society. Heider emphasizes the cultural responsibility to students with intellectual and developmental disabilities, and Hoehne and Yanich highlight eyewitness testimony in court and its ramifications for guilt or non-guilt.

Lastly, Williams takes a more reflective approach in exploring how society and culture impact an individual's journey and choices as he presents an alternative social-disorganization view of Al Capone.

It is imperative to take a moment to thank Damien Cowger and Evan Davis for all their hard work. They spent numerous hours working with the students and getting this document to print. This could not have been done without them!!

Thank you to Jeff Tolbert for seeing the opportunity and incorporating us within this journey.

Dr. Shauntey James and Dr. Patricia Aguilera

Penn State Harrisburg

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How Medical Marijuana Policies Reproduce the Status Quo

Nabin Adhikari, Jocelyn Hanula, and Shannon Ryan

The Pennsylvania State University

Public attitudes have dramatically transformed from stigmatization to acceptance of medical marijuana legalization. However, the federal government upholds its Schedule I Classification, preventing medical access and barring scientific research. States rapidly working towards the legalization of medical marijuana points to progressive future policies, but as long as the federal government fails to acknowledge marijuana's medicinal properties and continues the War on Drugs, legal changes remain at a standstill. This paper uses the umbrella term *conflict paradigm* to incorporate common ideological tenets of conflict theories. In relation to medical marijuana legislation, the law is viewed as repressive via differential law enforcement. In addition, the law is not considered value-neutral in relation to economic accessibility seemingly skewed toward the wealthy. Lastly, the law functions as a tool for the powerful elite as noted through discarded scientific research and links to special interest groups. As illustrated by the conflict paradigm, racist legal prejudices, economic burdens, and the politicized federal hesitancy to legalize medical marijuana portray how current medical marijuana laws reproduce social hegemony. In utilizing this theoretical framework to evaluate Pennsylvania's Medical Marijuana Program, this review argues that without movement on the federal level, states' medical marijuana policies will fail to provide relief to many vulnerable populations and reproduce social inequalities.

OVERVIEW OF U.S. MARIJUANA LEGISLATION

Successive U.S. administrations of different ideological backgrounds have continued to ignore the medical benefits of marijuana and reaffirmed its criminalization. Overall, anti-marijuana legislative efforts have appeared categorically racist.¹ Since the early twentieth century, anti-marijuana legislation revealed repeated struggles to curb deviance via concocted associations of drug use with minority groups to

1 Kenneth M. White and Mirya R. Holman, "Marijuana Prohibition in California: Racial Prejudice and Selective-Arrests," *Race, Gender & Class* 19, no. 3 (2012): 75-92.

insinuate that marijuana threatened traditional values.² By 1970, the Controlled Substances Act presented a mechanism for the Nixon administration to target political rivals.³ As illustrated by unacceptable racial disparities concerning drug offenses in the Criminal Justice System, these same negative associations still resonate with many Americans today.⁴

The George W. Bush administration's actions sent clear messages of disapproval toward medical marijuana to instill a culture of fear for citizens using the substance. The Supreme Court affirmed the Bush administration's desires via two high-profile cases. In *United States v. Oakland Cannabis Buyers' Cooperative*, the court held that medical necessity failed to justify changes in federal law pertaining to the manufacture and distribution of medical marijuana.⁵ Later, in *Gonzales v. Raich* (2005), the court again aligned with the Bush administration by overriding state law and reaffirming Congress' power to regulate commerce in relation to medical marijuana in accordance with federal law.⁶ Overall, both cases strengthened the Bush administration's resolve to federally prosecute medical marijuana users and distributors, thus impeding any progress enacted by the states. Later, the Obama administration displayed reluctance to enact change in relation to medical marijuana. Legislation remained stunted since the *Gonzalez v. Raich* case upheld the prohibition of its intrastate production.⁷

2 Kathlyn Ferraiolo, "Morality Framing in U.S. Drug Control Policy: An Example From Marijuana Decriminalization," *World Medical & Health Policy* 6, no. 4 (December 2014): 347-374.

3 Joseph Darda, "Dispatches from the Drug Wars: Ishmael Reed, Oscar Zeta Acosta, and the Viet Cong of America," *Modern Fiction Studies* 64, no. 1 (Spring 2018): 79-103.; Tom LoBianco, "Report: Aide Says Nixon's War on Drugs Targeted Blacks, Hippies," *CNN Politics*, March 24, 2016.

4 Federal Bureau of Prisons, "Offenses," last modified February 15, 2020.; Federal Bureau of Prisons, "Inmate Race," accessed March 4, 2020.

5 Aviva Halpern, "Pain: No Medical Necessity Defense for Marijuana to Controlled Substances Act," *Journal of Law, Medicine & Ethics* 29, no. 3 (Fall 2001): 410-411.

6 Sara Rosenbaum, "*Gonzales v. Raich*: Implications for Public Health Policy," *Public Health Reports* 120, no. 6 (2005): 680-682.

7 Dina Titus, "'Puff, Puff, Pass...' That Law: The Changing Legislature Environment of Medical Marijuana Policy," *Harvard Journal on Legislation* 53, no. 1 (January 2016): 39-58.; George Fitting, "Careless Conflicts: Medical Marijuana Implications for Employer Liability in the Wake of *Vialpando v. Ben's Automotive Services*," *Iowa Law Review* 102, no. 1 (November 2016): 259-288.; Abigail R. Moncrieff, "The Individual Mandate as Healthcare Regulation: What the Obama Administration Should Have Said in *NFIB v. Sebelius*," *American Journal of Law & Medicine*

Obama administration's actions reflected concerns that targeted its economic implementation and commercial impact, specifically moving manufacturing responsibilities to the pharmaceutical industry to both benefit and appease insurance companies.⁸ Interestingly, states spend over three trillion dollars enforcing marijuana laws each year, accounting for 52% of all drug arrests,⁹ which has continued to steadily surpass all other drug offenses since 1996.¹⁰ Ultimately, the Obama administration's focus on economic incentives versus government spending illustrated the underlying motivation to appease powerful and wealthy groups when creating laws in a capitalist structure.

The racist connotations surrounding marijuana legislation illustrate the conflict paradigm in that law is repressive, for Pollock noted that "it oppresses the poor and powerless by differential definitions and/or enforcement."¹¹ To portray the law's repressive characteristics, punitive sanctions against marijuana offenders are marked by racial disparities in decriminalized states despite different races using medical marijuana at equal rates.¹² Per the conflict paradigm, the extensively documented history of tense relations between minorities and the police support notions of discretionary and differential law enforcement.¹³ For reference, while African Americans comprise 13% of the U.S. population and only 14% of all drug users, they account for 37% of those arrested for drug offenses and 56% of those incarcerated for such offenses in state prisons.¹⁴ Mandel argued that "if arrests do not

reflect usage patterns, and arrests fall most heavily on the lowest strata racial and ethnic minorities, then by definition the law enforcement is racist, in effect if not intent."¹⁵ Given that no difference in marijuana use exists between privileged and marginalized groups,¹⁶ probable explanations for racial disparities include how law enforcement targets minorities at higher rates than their white counterparts. So long as federal legal statutes trump state laws, piecemeal medical marijuana legalization will continue to negatively impact marginalized communities.

PENNSYLVANIA'S MEDICAL MARIJUANA PROGRAM

Pennsylvania legalized medical marijuana on April 17, 2016.¹⁷ Governor Wolf extended the list of approved medical conditions from 17 to 23 as prerequisites for state card holders to obtain medical marijuana.¹⁸ The list includes a range of disorders like nerve damage, anxiety issues and cancer, among others.¹⁹ In addition, strict guidelines control access to medical marijuana cards, which involves online registration, a prescription from a medical marijuana-approved physician specifically for one of the 23 approved conditions, and multiple payments for processing and licensing fees.²⁰ Although lower-income patients are eligible for discounted rates, "at this time, insurance companies do not cover medical marijuana."²¹ This arrangement largely applies to other states

257-291.

15 Jerry Mandel, "Is Marijuana Law Enforcement Racist?," *Journal of Psychoactive Drugs* 20, no. 1 (January 1988): 83-92.

16 Li-Tzy Wu et al., "Racial/Ethnic Variations in Substance-Related Disorders Among Adolescents in the United States," *Archive of General Psychiatry* 68, no. 11 (November 2011): 1176-1185.

17 Jan Murphy, "It's Official: Medical Marijuana Now Legal in Pennsylvania," *PennLive*, April 17, 2016.

18 David Wenner, "These 23 Conditions Can Qualify You to Get Medical Marijuana in Pa," *PennLive*, September 3, 2019.

19 Pennsylvania Department of Health, "Pennsylvania Medical Marijuana Program: Information for Patients," Harrisburg Office of Medical Marijuana, August 2019, accessed March 4, 2020.; Jon O. Ebbert, Eugene L. Scharf and Ryan T. Hurt, "Medical Cannabis," *Mayo Clinic Proceedings* 93, no. 12 (December, 2018): 1842-1847.; S. Scott Paist, "The Medical Marijuana Law in Pennsylvania," *The Journal of Lancaster General Hospital* 11, no. 3 (Fall 2016): 73-74.

20 Pennsylvania Department of Health, "Pennsylvania Medical Marijuana Program.;" Thomas G. Wilkinson, "Pennsylvania's New Medical Marijuana Law: The Legal Roadmap for a Growing Industry," *Pennsylvania Bar Association Quarterly* 87, no. 4 (October 2016): 147-160.

21 Pennsylvania Department of Health, "Pennsylvania Medical Marijuana Program."

39, no. 4 (Winter 2013): 539-572.

8 Titus, "Puff, Puff, Pass..."

9 Ezekiel Edwards, Will Bunting and Lynda Garcia, "The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests," ACLU Foundation, June 2013, last modified September 11, 2013.

10 Tina L. Dorsey and Priscilla Middleton, "Drugs and Crime Facts," U.S. Department of Justice, Bureau of Justice Statistics, NCJ 165148, last modified April 12, 2007.

11 Joycelyn M. Pollock, *Ethical Dilemmas and Decisions in Criminal Justice, Ninth Edition* (Boston: Cengage Learning, 2017), 232.

12 Caislin L. Firth et al., "Did Marijuana Legalization in Washington State Reduce Racial Disparities in Adult Marijuana Arrests?," *Substance Use & Misuse* 54, no. 9 (2019): 1582-1587.; Edwards et al., "The War on Marijuana in Black and White."

13 Shaun L. Gabbidon, *Criminological Perspectives on Race and Crime, Third Edition* (New York: Routledge, 2015).

14 United States House of Representatives, Committee on the Judiciary, "Hearing on Racial Disparities in the Criminal Justice System," 111th Cong., 2nd sess. January 3rd, 2011, 142.; Jaime Fellner, "Race, Drugs, and Law Enforcement in the United States," *Stanford Law & Policy Review* 20, no. 2 (Spring 2009):

with medical marijuana programs.²²

The relatively high costs of patient participation in Pennsylvania's Medical Marijuana Program demonstrates the law's economic bias. Estimates of incurred costs include the initial appointment with an approved physician at a minimum of \$250.00, a state registration fee averaging upwards of \$75.00, dispensary costs ranging from \$20.00 to \$300.00, registration renewals at around \$75.00, and follow-up doctor's visits from \$80.00 to \$200.00.²³ In Pennsylvania, a recent survey found that most patients pay upwards of \$200.00 per month on medical marijuana, while over half stopped filling prescriptions entirely because of the cost.²⁴ In relation to the conflict paradigm, unequal access to medical marijuana in states like Pennsylvania with a legal program represents how the law is not value-neutral, for Pollock argued that "it is biased and bent toward the powerful."²⁵ As a result, disadvantaged or uninsured individuals are forced to resort to unconventional or illicit means to procure marijuana, thus increasing the likelihood of contact with the Criminal Justice System. Marijuana convictions impose collateral consequences, such as the loss of employment, denial of student loans and economic burdens due to fines or legal representation.²⁶ Without sufficient economic resources, less advantaged social groups experience more economic barriers due to the problematic divide between federal and state laws.

HESITATION FOR LEGALIZATION

The politicization of medical marijuana legislation, in relation to disregarded scientific research and associations aligning with special interest groups, call into question the federal government's inaction. Repeated historical trends demonstrate that officials ignored government data illustrating the benefits and low risks of medical marijuana. The 1944 LaGuardia Report found the links between crime, addiction and marijuana unfounded, yet no changes to federal law

22 Thomas G. Wilkinson, "Pennsylvania's New Medical Marijuana Law."

23 Tierra Healthcare Concepts, "Medical Marijuana and Health Insurance in 2019," accessed March 4, 2019.

24 Heather Stauffer, "Many Pa. Medical Marijuana Patients Pay at Least \$200 a Month, Survey Finds," *Lancaster Online*, February 19, 2020.

25 Pollock, *Ethical Dilemmas and Decisions in Criminal Justice*, 232.

26 Patrick K. O'Brien, "Medical Marijuana and Social Control: Escaping Criminalization and Embracing Medicalization," *Deviant Behavior* 34, no. 6 (February 2013): 423-443.

occurred.²⁷ Despite a report from the Shafer Commission in 1972 recommending decriminalization, due to finding no credible connections between marijuana use and public safety, President Nixon remained unconvinced.²⁸ Even though the government-funded Institute of Medicine's review of medical marijuana affirmed its therapeutic value, top federal officials suppressed the scientific evidence to uphold contradictory policies.²⁹ Conducting scientific research into medical marijuana's safety remains a complex struggle due to numerous legal constraints.³⁰ Although more research documenting the benefits and safety of medical marijuana is necessary, scientific and academic attempts are constantly obstructed by federal restrictions still clinging to unempirical and inconclusive links between marijuana use and crime.³¹

Marijuana's Schedule I classification prevents researchers from conducting significant scientific studies of the drug's medicinal benefits.³² Although Schedule I and II drugs possess a high potential for abuse, all categories below Schedule I classify as accepted medical treatments and enjoy a less bureaucratic research process.³³ A possible motivation behind the federal government's hesitancy can be inferred from the special interest groups lobbying against medical marijuana's legalization. Powerful groups like the pharmaceutical industry, alcohol companies, and the U.S. prison industrial complex lobby against legalization to shield profits from competitive threats posed

27 Fiorello LaGuardia, "The LaGuardia Committee Report: The Marijuana Problem in the City of New York," *New York Academy of Medicine*, 1944, accessed March 4, 2020.

28 Gabriel G. Nahas and Albert Greenwood, "The First Report of the National Commission on Marijuana (1972): Signal of Misunderstanding or Exercise in Ambiguity," *Bulletin of the New York Academy of Medicine* 50, no. 1 (January 1974): 55-75.

29 Titus, "Puff, Puff, Pass..."

30 Esther K. Choo and Sherry L. Emery, "Clearing the Haze: The Complexities and Challenges of Research on State Marijuana Laws," *Annals of The New York Academy of Sciences* 1394, no. 1 (April 2017): 55-73.

31 Yu-Wei Luke Chu and Wilbur Townsend, "Joint Culpability: The Effects of Medical Marijuana Laws on Crime," *Journal of Economic Behavior & Organization* 159 (March 2019): 502-525.

32 Titus, "Puff, Puff, Pass..."; Amanda Frankel, "Dr. Green-Thumb Goes to Washington: A Scientific Argument for the Legalization of Medical Marijuana," *Seton Hall Circuit Review* 14, no. 1 (2017): 124-160.

33 Drug Enforcement Administration, "Drugs of Abuse. A DEA Resource Guide," U.S. Department of Justice, 2017, last modified June 15, 2017.; John Thomas, "The Past, Present, and Future of Medical Marijuana in the United States." *Psychiatric Times* 27, no. 1 (January 2010).

by regulated medical marijuana.³⁴ Vago asserted that “what these groups are buying, by and large, are prestige and access to the inner sanctum of government.”³⁵ In obstructing scientific research, powerful groups maintain monopolies over social and legal controls to preserve the status quo, further supporting assertions that underlying interests impede policy progress. Marxist and other conflict theories have argued that economic interests ultimately take priority over democratic principles in a capitalist system,³⁶ possibly explicating legislators’ perceived tendency to rank lobbyists’ concerns higher than those of their constituents. The conflict paradigm contends that laws serve as tools for powerful groups, for Pollock noted that “those who write the laws do so in a way to promote their economic and political interests.”³⁷ It has been suggested that the federal government’s hesitancy is a mechanism to ensure their ability to control future medical marijuana regulation and subsequent profits.³⁸ Overall, the hesitancy to mend the divide between federal and state medical marijuana laws represent dominant groups’ inclination to consolidate power over valuable products prior to public consumption in order to maintain the status quo.

CONCLUSION

Per the conflict paradigm, medical marijuana legislation illuminates how laws are repressive, economically biased, and weaponized by powerful groups to maintain the status quo of social inequality. Ultimately, policies and laws that oppress historically marginalized groups and prevent access to crucial medical care for the general public indicates a problem. The racist history of marijuana laws and subsequent criminal justice disparities demonstrate how the law is repressive. Furthermore, medical marijuana programs saturated with economic biases, as demonstrated by Pennsylvania, portray how the law is not value-neu-

34 Chelsea L. Shover and Keith Humphreys, “Six Policy Lessons Relevant to Cannabis Legalization,” *The American Journal of Drug and Alcohol Abuse* 45, no. 6 (2019): 698-706.; John F. Pfaff, “The War on Drugs and Prison Growth: Limited Importance, Limited Legislative Options,” *Harvard Journal on Legislation* 52, no. 1 (2015): 173-220.

35 Steven Vago, *Law and Society, Tenth Edition* (Upper Saddle River: Pearson, 2012), 127.

36 Thomas J. Bernard, Jeffery B. Snipes and Alexander L. Gerould, *Vold’s Theoretical Criminology, Seventh Edition* (New York: Oxford University Press, 2015).

37 Pollock, *Ethical Dilemmas and Decisions in Criminal Justice*, 232.

38 Titus, “Puff, Puff, Pass...”

tral. Lastly, the reluctance of the federal government to legalize medical marijuana in correlation with interest groups’ actions to maintain marijuana’s illegality portrays how the law works as a tool for the powerful to wield over and at the expense of less privileged groups. Without policy changes on the federal level, states’ legal actions are virtually meaningless. Under the current system in which the elite manipulate the law, fragmented medical marijuana legislation will inevitably reproduce the status quo of social inequality that dictates the allocation and access to resources in the United States in ways that benefit the powerful over the powerless.

WORKS CITED

- Bernard, Thomas J., Jeffery B. Snipes and Alexander L. Gerould. *Vold’s Theoretical Criminology, Seventh Edition*. New York: Oxford University Press, 2015.
- Choo, Esther K. and Sherry L. Emery. “Clearing the Haze: The Complexities and Challenges of Research on State Marijuana Laws.” *Annals of The New York Academy of Sciences* 1394, no. 1 (April 2017): 55-73. doi:10.1111/nyas.13093.
- Chu, Yu-Wei Luke and Wilbur Townsend. “Joint Culpability: The Effects of Medical Marijuana Laws on Crime.” *Journal of Economic Behavior & Organization* 159 (March 2019): 502–525. <https://doi.org/10.1016/j.jebo.2018.07.003>.
- Darda, Joseph. “Dispatches from the Drug Wars: Ishmael Reed, Oscar Zeta Acosta, and the Viet Cong of America.” *Modern Fiction Studies* 64, no. 1 (Spring 2018): 79-103. doi:10.1353/mfs.2018.0003.
- Dorsey, Tina L. and Priscilla Middleton. “Drugs and Crime Facts.” U.S. Department of Justice, Bureau of Justice Statistics. NCJ 165148. Last modified April 12, 2007. <https://www.bjs.gov/content/pub/pdf/dcf.pdf>.
- Drug Enforcement Administration. “Drugs of Abuse. A DEA Resource Guide.” U.S. Department of Justice, 2017. Last modified June 15, 2017. https://www.dea.gov/sites/default/files/drug_of_a_buse.pdf.

- Ebbert, Jon O., Eugene L. Scharf, and Ryan T. Hurt. "Medical Cannabis." *Mayo Clinic Proceedings* 93, no. 12 (December 2018): 1842-1847. doi:10.1016/j.mayocp.2018.09.005.
- Edwards, Ezekiel, Will Bunting, and Lynda Garcia. "The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests." New York ACLU Foundation, June 2013. Last modified September 11, 2013. <https://www.aclu.org/report/report-war-marijuana-black-and-white>.
- Federal Bureau of Prisons. "Inmate Race." Last modified February 15, 2020. https://www.bop.gov/about/statistics/statistics_inmate_race.jsp.
- Federal Bureau of Prisons. "Offenses." Last modified February 15, 2020. https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp.
- Fellner, Jaime. "Race, Drugs, and Law Enforcement in the United States." *Stanford Law & Policy Review* 20, no. 2 (Spring 2009): 257-291. Gale OneFile.
- Ferraiolo, Kathleen. "Morality Framing in U.S. Drug Control Policy: An Example From Marijuana Decriminalization." *World Medical & Health Policy* 6, no. 4 (December 2014): 347-374. doi:10.1002/wmh3.114.
- Firth, Caislin L., Julie E. Maher, Julia A. Dilley, Adam Darnell and Nicholas P. Lovrich. "Did Marijuana Legalization in Washington State Reduce Racial Disparities in Adult Marijuana Arrests?" *Substance Use & Misuse* 54, no. 9 (2019): 1582-1587. doi:10.1080/10826084.2019.1593007.
- Fitting, George. "Careless Conflicts: Medical Marijuana Implications for Employer Liability in the Wake of *Vialpando v. Ben's Automotive Services*." *Iowa Law Review* 102, no. 1 (November 2016): 259-288. Gale OneFile.
- Frankel, Amanda. "Dr. GreenThumb Goes to Washington: A Scientific Argument for the Legalization of Medical Marijuana." *Seton Hall Circuit Review* 14, no. 1 (2017): 124-160. https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1188&context=circuit_review.
- Gabbidon, Shaun L. *Criminological Perspectives on Race and Crime, Third Edition*. New York: Routledge, 2015.
- Halpern, Aviva. "Pain: No Medical Necessity Defense for Marijuana to Controlled Substances Act." *Journal of Law, Medicine & Ethics* 29, no. 3 (Fall 2001): 410-411. ProQuest.
- LaGuardia, Fiorello. "The LaGuardia Committee Report: The Marijuana Problem in the City of New York." New York Academy of Medicine, 1944. Accessed March 4, 2020. <https://dag-gacouple.co.za/wp-content/uploads/1944/04/La-Guardia-report-1944.pdf>.
- LoBianco, Tom. "Report: Aide Says Nixon's War on Drugs Targeted Blacks, Hippies." *CNN Politics*, March 24, 2016. <https://www.cnn.com/2016/03/23/politics/john-ehrllichman-richard-nixon-drug-war-blacks-hippie/index.html>.
- Mandel, Jerry. "Is Marijuana Law Enforcement Racist?" *Journal of Psychoactive Drugs* 20, no. 1 (January 1988): 83-92. Taylor & Francis Online.
- Moncrieff, Abigail R. "The Individual Mandate as Healthcare Regulation: What the Obama Administration Should Have Said in *NFIB v. Sebelius*." *American Journal of Law & Medicine* 39, no. 4 (Winter 2013): 539-572. Gale OneFile.
- Murphy, Jan. "It's Official: Medical Marijuana Now Legal in Pennsylvania." *PennLive*, April 17, 2016. https://www.pennlive.com/politics/2016/04/its_official_medical_marijuana.html.
- Nahas, Gabriel G. and Albert Greenwood. "The First Report of the National Commission on Marijuana (1972): Signal of Misunderstanding or Exercise in Ambiguity." *Bulletin of the New York Academy of Medicine* 50, no. 1 (January 1974): 55-75. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1749335/>.
- O'Brien, Patrick K. "Medical Marijuana and Social Control: Escaping Criminalization and Embracing Medicalization." *Deviant Behavior* 34, no. 6 (February 2013): 423-443. doi:

10.1080/01639625.2012.735608.

- Paist, S. Scott. "The Medical Marijuana Law in Pennsylvania." *The Journal of Lancaster General Hospital* 11, no. 3 (Fall 2016): 73-74. <http://www.jlgh.org/JLGH/media/Journal-LGH-Media-Library/Past%20Issues/Volume%2011%20-%20Issue%203/Medical-Marijuana-in-PA.pdf>.
- Pennsylvania Department of Health. "Pennsylvania Medical Marijuana Program: Information for Patients." Harrisburg Office of Medical Marijuana. Last modified August 2019. https://www.health.pa.gov/topics/Documents/Programs/Medical%20Marijuana/Medical%20Marijuana_Patients_revised%208-19_web.pdf.
- Pfaff, John F. "The War on Drugs and Prison Growth: Limited Importance, Limited Legislative Options." *Harvard Journal on Legislation* 52, no. 1 (2015): 173-220. ProQuest.
- Pollock, Joycelyn M. *Ethical Dilemmas and Decisions in Criminal Justice, Ninth Edition*. Boston: Cengage Learning, 2017.
- Rosenbaum, Sara. "Gonzales v. Raich: Implications for Public Health Policy." *Public Health Reports* 120, no. 6 (2005): 680-682. doi:10.1177/003335490512000617.
- Shover, Chelsea L. and Keith Humphreys. "Six Policy Lessons Relevant to Cannabis Legalization." *The American Journal of Drug and Alcohol Abuse* 45, no. 6 (2019): 698-706. doi:10.1080/00952990.2019.1569669.
- Stauffer, Heather. "Many Pa. Medical Marijuana Patients Pay at Least \$200 a Month, Survey Finds." *Lancaster Online*, February 19, 2020. https://lancasteronline.com/news/local/many-pa-medical-marijuana-patients-pay-at-least-a-month/article_2b703650-5277-11ea-9bee-0f7d89d47895.html.
- Thomas, John. "The Past, Present, and Future of Medical Marijuana in the United States." *Psychiatric Times* 27, no. 1 (January 2010). <https://www.psychiatristimes.com/schizophrenia/past-present-and-future-medical-marijuana-united-states>.
- Health Insurance in 2019." Accessed March 4, 2019. <https://thcphysicians.com/medical-marijuana-health-insurance/>.
- Titus, Dina. "Puff, Puff, Pass...That Law: The Changing Legislature Environment of Medical Marijuana Policy." *Harvard Journal on Legislation* 53, no. 1 (January 2016): 39-58. ProQuest.
- United States House of Representatives, Committee on the Judiciary. "Hearing on Racial Disparities in the Criminal Justice System." 111th Cong., 2nd sess. January 3rd, 2011.
- Vago, Steven. *Law and Society, Tenth Edition*. Upper Saddle River: Pearson, 2012.
- Wenner, David. "These 23 Conditions Can Qualify You to Get Medical Marijuana in Pa." *PennLive*, September 3, 2019. <https://www.pennlive.com/news/2019/09/these-23-conditions-can-qualify-you-to-get-medical-marijuana-in-pa.html>.
- White, Kenneth Michael and Mirya R. Holman. "Marijuana Prohibition in California: Racial Prejudice and Selective-Arrests." *Race, Gender & Class* 19, no. 3 (2012): 75-92. ProQuest.
- Wilkinson, Thomas G. "Pennsylvania's New Medical Marijuana Law: The Legal Roadmap for a Growing Industry." *Pennsylvania Bar Association Quarterly* 87, no. 4 (October 2016): 147-160. HeinOnline.
- Wu, Li-Tzy, George E. Woody, Chongming Yang, Jeng-Jong Pan and Dan G. Blazer. "Racial/Ethnic Variations in Substance-Related Disorders Among Adolescents in the United States." *Archive of General Psychiatry* 68, no. 11 (November 2011): 1176-1185. doi:10.1001/archgenpsychiatry.2011.120.

Everyone Deserves College: Success with Inclusive Post-Secondary Education

Madison Heider

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INTRODUCTION

Intellectual and developmental disabilities (IDD) are defined by the National Institute of Child Health and Human Development as, “disorders that are usually present at birth and that negatively affect the trajectory of the individual’s physical, intellectual, and/or emotional development.”¹ Individuals with IDD face difficulties such as social exclusion, physical limitations, and lack of opportunities because of their disorders and because the systems currently in place are unprepared to respond to individual needs. One of the largest disparities for those with IDD is accessing the workplace, as “85% of families reported that their adult family members with IDD were not employed.”² Of those who are employed, there is current legislation that allows individuals with IDD to be paid subminimum wages if their work is not to the standard of an employee without a disability.³ With these indicators present, the obtainability of competitive employment for individuals with IDD appears to be near impossible.

Individuals with intellectual and developmental disabilities are part of an at-risk population that often utilizes the benefits of many human services. At-risk populations are defined as “any group of individuals who are vulnerable to exploitation due to lifestyle, lack of political power, lack of financial resources, and/or lack of societal advocacy and support.”⁴ Many challenges that lie before these populations are often created within society, which causes a type of systemic exclusion from privileges that other populations are welcome to. An appropriate response to these systemic issues is to view human services interventions through the lens of macro practice, which involves “addressing

1 NIH, “Intellectual and Developmental Disabilities (IDDs): Condition Information,” 2016.
2 The ARC of Pennsylvania, “Advocacy for People with Disabilities: Harrisburg,” 2019.
3 U.S. Department of Labor Wage and Hour Division, “PDF,” 2008.
4 Michelle E. Martin, *Introduction to Human Services: Through the Eyes of Practice Settings*. (New York: Pearson Education, 2014).

and confronting social issues that can act as a barrier to getting one’s basic needs met on an organizational level by creating structural change through social action.”⁵ With the disparities present within employment for individuals with disabilities, programs have been created to increase employment for this population. With the right education and support, individuals with disabilities are more than capable of competing in the job market. Creating and implementing more inclusive post-secondary education programs could assist in this process.

Inclusive post-secondary education programs (IPSE) focus on the quality of life of students with intellectual and developmental disabilities by improving employability and life skills to increase independence.⁶ For post-secondary programs to receive funding, the U.S. Department of Education has mandated that programs provide students “academic enrichment, socialization, independent living skills, and integrated work experiences,” in an attempt to replicate the experiences of students without disabilities.⁷ Support for these programs has grown, as the ideology of giving students with IDD similar documentation that accredits the skills they have gained through higher education is not only helpful for the student, but also for future employers.⁸ *The Handbook of Research-Based Practices for Educating Students with Intellectual Disability* summarizes the overarching mission for these programs best, explaining “for all students to be valued members of their school community, who participate in their grade-level curriculum in a meaningful way and are successful in learning skills to become contributing members of their communities.”⁹ While the movement towards inclusive post-secondary education programs is still developing, it is important to recognize the persistent strides that these programs have made in assisting individuals with transitioning into the working world.

IPSE STRUCTURE

5 Ibid.

6 Michael L. Wehmeyer et al., *A Comprehensive Guide to Intellectual and Developmental Disabilities* (Baltimore: Paul H. Brookes Publishing, Co., 2017), 575.

7 U.S. Department of Education, “Transition and Postsecondary Programs for Students with Intellectual Disabilities,” 2015.

8 Wehmeyer et al., *A Comprehensive Guide to Intellectual and Developmental Disabilities*, 576.

9 Michael L. Wehmeyer and Karrie A. Shogren, *Handbook of Research-Based Practices for Educating Students with Intellectual Disability* (New York: Routledge, Taylor & Francis Group, 2017), 192.

Inclusive post-secondary education programs have created and organized communities that consist of students with and without disabilities that mutually benefit from this type of service. These programs are designed to include students with intellectual and developmental disabilities on college campuses. This is achieved by establishing a coordinator and peer mentors. The coordinator is responsible for academic arrangements, administrative duties, contact with families, organization of peer mentors, and education on inclusive practices to the campus community.¹⁰ Peer mentors are students from the university who do not have an intellectual or developmental disability and have the responsibility to support students within the program. This role is to assist students in acclimating to campus life to ensure they can participate to the best of their ability, such as involvement in group projects, extracurricular activities, and practicum experiences.¹¹ Students within the program must have a documented intellectual or developmental disability and participate in modified academic coursework.¹²

A multitiered system of support is implemented, specifically, a Comprehensive, Integrated, Three-Tiered (Ci3T) Model is utilized to focus on all aspects of student enrichment.¹³ The three levels of support are labeled as primary, secondary, and tertiary. Primary supports are available to all students; in relationship to the program, examples of primary supports would be general education classes, access to counseling services, and ability to utilize the library.¹⁴ All of the above-mentioned privileges would be available to any student on the college campus. When further support is necessary for certain students, this is considered secondary support.¹⁵ Students within this type of program often have specialized coursework that focuses on career development and other life skills. This would be an example of secondary support, as only a certain subset of students has access to this support. The final level of support that is given is the most individualized—this is referred to as tertiary support.¹⁶ Allowing students to be assisted socially, behaviorally, and academically by fellow students (peer mentors)

¹⁰ Bruce Uditsky and Elizabeth Hughson, “Inclusive Postsecondary Education—An Evidence-Based Moral Imperative,” *Journal of Policy and Practice in Intellectual Disabilities* 9, no. 4 (2012): 301.

¹¹ Ibid, 300.

¹² Ibid.

¹³ Wehmeyer and Shogren. *Handbook of Research-Based Practices for Educating Students with Intellectual Disability*, 187.

¹⁴ Ibid, 188.

¹⁵ Ibid, 189.

¹⁶ Ibid, 190.

presents the use of natural supports; this is beneficial to students as the reinforcement and support are less structured and mimics life-like situations that have presented generally positive experiences.¹⁷

To prove high-quality services and to be accepted by the Department of Education, inclusive post-secondary education programs have to provide academic enrichment, socialization, independent living skills, and integrated work experiences to students with intellectual and developmental disabilities. The following sections discuss each area and its importance in benefiting students with intellectual and developmental disabilities.

ACADEMIC ENRICHMENT

A college education has become a standard measurement of success for neurotypical individuals and is slowly expanding to include those with intellectual and developmental disabilities. Among all college students, this form of education has been repeatedly found as a precursor to “stronger employment outcomes, a longer life, happiness, and community involvement” and for those with IDD, there is an increase in employability and average pay.¹⁸ There are multiple modes of instruction that can be utilized within programs of this sort that vary depending on the amount of inclusion that is practiced within the program. Some models focus solely on inclusion, where others have higher participation in specialized classes. Though the mixed/hybrid model incorporates aspects of both, this system includes “primarily inclusive academic and social activities, however, separate academic or life skill support is also provided.”¹⁹ Students would have access to academically inclusive classes, with students who do not have disabilities, as well as academically specialized classes exclusively with peers within the program.²⁰ The variation of courses offered to students allows for independent interests to be met while also maintaining the initial mission of educating for competitive employment.

SOCIALIZATION

Individuals with intellectual and developmental disabilities face many barriers when it comes to social interactions. These include but are not limited to reduced facetime with peers, troubles with commu-

¹⁷ Ibid, 354-355.

¹⁸ Wehmeyer et al., *A Comprehensive Guide to Intellectual and Developmental Disabilities*, 549.

¹⁹ Ibid.

²⁰ Ibid.

nication, undervalued roles within relationships, and lack of support within these interactions.²¹ Inclusive post-secondary education programs are providing answers to many of these difficulties by bringing peers with disabilities together, continuing education on life skills such as communication, teaching students self-advocacy skills, and modeling and supporting students in social situations. The competency-deviancy hypothesis asserts that society is more likely to accept behaviors that are typically considered deviant when the individual also can portray favorable life skills that exemplify independence.²² The goal of socialization within these programs is to help students meet their “criterion of ultimate functioning” which is the ability of an individual to perform “as productively and independently as possible.”²³ Students have access to the same amenities on campus as other students, such as communal spaces, campus resources, campus-wide events, etc. The students can be encouraged to participate in clubs, meet friends outside of the program, and attend any campus event that sparks their interest. These opportunities for socialization with neurotypical peers have often not been available in other settings and research highlights the importance of this type of inclusive integration for both sets of students.²⁴

INDEPENDENCE

Individuals with intellectual and developmental disabilities are overwhelmingly kept from providing input on decisions that impact their lives.²⁵ This often results in the individual’s inability to make decisions for themselves. The level of independence that is expected of a college student is something that needs to be taught within inclusive post-secondary education programs; these expectations exceed high school skills acquisition, as students are responsible for their schedule, study time per class is extended, and mastery of course material is expected in a shortened timeframe.²⁶ Person-cen-

21 Wehmeyer and Shogren, *Handbook of Research-Based Practices for Educating Students with Intellectual Disability*, 238-239.

22 Richard M. Gargiulo and Emily C. Bouck, *Instructional Strategies for Students with Mild, Moderate, and Severe Intellectual Disability* (Los Angeles: Sage, 2018), 339.

23 Ibid, 337.

24 Wehmeyer and Shogren, *Handbook of Research-Based Practices for Educating Students with Intellectual Disability*, 240.

25 Ibid, 256.

26 Paul Wehman, *Essentials of Transition Planning* (Balti-

tered planning is an approach that is utilized within IPSE programs to allow students to “explore, identify, and better understand...personal interests, preferences, and needs.”²⁷ The importance of this practice is allowing for it to be student guided, which engages the student in understanding their needs while holding them accountable for progress on goals set. This resource is valuable for students with IDD as it teaches them how to independently advocate for their needs, seek help as appropriate, and make decisions with limited guidance.

INTEGRATED WORK EXPERIENCE

The inequality of individuals with intellectual and developmental disabilities in the workplace is discussed above, but the benefits of inclusive post-secondary education on positive employment outcomes for students cannot be stressed enough. A study was conducted to analyze the employment outcomes for individuals with disabilities who attended inclusive post-secondary education programs by sending a survey to all graduates over six years. Students who participated in an inclusive program were employed at a rate of 85% compared to high school educated peers who were employed at a rate of 34%.²⁸ Another goal of inclusive post-secondary education programs is competitive wages, as many individuals with disabilities work for wages that are below the federally regulated minimum of \$7.25. The average wage of those who participated in a program was \$8.93/hour which is over a dollar above the minimum wage, considered to be a competitive wage.²⁹ These positive outcomes for employment for individuals with disabilities speak to the validity of these types of programs.

CHALLENGES

Students with intellectual and developmental disabilities who participate in inclusive post-secondary education need more support than typical college resources can provide.³⁰ Providing the indi-

more: Brookes Publishing Co., 2011), 60.

27 Ibid, 91.

28 Joseph B. Ryan et al., “Employment and Independent Living Outcomes of a Mixed Model Post-Secondary Education Program for Young Adults with Intellectual Disabilities,” *Journal of Vocational Rehabilitation* 50, no. 1 (2019).

29 Ibid.

30 Kewi Fewox, “A Multiple Case Study Examining the Challenges and Successes in the Development and Implementation of Transition and Post-Secondary Education Programs for Students with Intellectual Disabilities,” Doctoral Dissertation, Liberty University, 2019.

visualized support that is discussed above relies on neurotypical students to volunteer their time or for the program to maintain a budget to employ these students to fill the peer mentor role. It can also be difficult to train and educate the peer mentors on pertinent academic, social, vocational, and medical strategies that may be applied when working with students.³¹ Another resource that can be challenging to coordinate is transportation.³² Most students could utilize busses, private driving services, rides from family members/caregivers, and/or drive themselves. Yet some individuals with IDD are unable to drive or independently utilize transportation services; this transportation to and from the college can cause a financial and time barrier for families. Many families with students without disabilities see the transition to college as the first step into adulthood, but for those with students that have an intellectual or developmental disability, this perceived transition is not as pronounced. Many dilemmas involve “letting go,” including wanting nothing more to do with caretaking for the individual to micromanaging every decision that the student makes.³³ Encouraging parents to have an appropriate level of involvement while still allowing the student to independently make decisions can be troublesome.

One of the most difficult challenges that these programs can face is changing “preconceived notions about the limited ability of students with intellectual disability to meaningfully contribute to the collegiate environment.”³⁴ Many of societies’ views about disability come from the medical model that focuses on blaming disadvantages on the impairments that the individual faces due to their disability.³⁵ These views have constructed the concepts of disability over time, as the terms for intellectual disability have been ever-changing. Throughout history there has not been a clear category of behaviors that have stood the test of time. Currently, students with intellectual and developmental disabilities have been

31 Wehmeyer and Shogren, *Handbook of Research-Based Practices for Educating Students with Intellectual Disability*, 483.

32 Ibid, 486.

33 Wehmeyer, *A Comprehensive Guide to Intellectual and Developmental Disabilities*, 546.

34 Wehmeyer and Shogren, *Handbook of Research-Based Practices for Educating Students with Intellectual Disability*, 483.

35 Bruce Uditsky and Elizabeth Hughson, “Inclusive Post-Secondary Education for Students with Significant Developmental Disabilities: Challenging Legal, Moral and Pragmatic Assumptions,” 2006.

involuntarily segregated from the post-secondary academic world because they have been defined by their label instead of being assessed by their personhood, ability, and desire to learn. Another societal perception that influences the understanding of inclusive post-secondary education is that this education is often sought by the most prestigious students, which by societies’ previous definition, is not those with intellectual and developmental disabilities. Understanding societal views on education and IDD is essential in moving forward towards change. Advocating for students’ ability, right to participate, and desire to better themselves through post-secondary education is crucial for the implementation and success of these programs.

CONCLUSION

Roughly 850 students with intellectual and developmental disabilities are currently being served in 48 inclusive post-secondary education programs across the United States.³⁶ Comparatively, there are 7,021 college and universities for those without disabilities in the United States. When reviewing the number of post-secondary education opportunities available to each population, the disparity is clear.³⁷ The number of students currently enrolled in these programs is only a fraction of those with IDD in the United States, which exposes the fact that the current number of programs is insufficient to accommodate all who might want to participate.

Inclusive post-secondary education programs are a beneficial way for human services organizations to expand their services to adults with disabilities to increase competitive employability. These programs are one of the only types of opportunities for those who have “aged out” of the system of services for IDD. These individuals have been labeled by society as incapable, which has put them at a disadvantage when it comes to the working world. Many would not be willing to admit that their personal depiction of individuals with disabilities in the workplace includes simple tasks such as janitorial work, food services, and factory work. Yet this is a common misperception that has been created within our culture. These types of jobs are definite possibilities for students with IDD, but it is in no way a limitation to what they are capable of. Inclusive

36 Meg Grigal et al., “Year Three Annual Report of the TPSID Model Demonstration Projects (2017–2018),” Boston: University of Massachusetts, *Institute for Community Inclusion*, 2018.

37 U.S. Department of Education, National Center for Education Statistics, “Digest of Education Statistics, 2017,” 2017.

programs not only give individuals with IDD knowledge of the working world, but they also open doors to opportunities that they would have never deemed available.

Future action for this type of service would be to expand the current number of programs that are available to those with disabilities and improve them to be at the same caliber as typical post-secondary education. Furthermore, advocacy for policy change would be beneficial for this community as it is still legal to pay subminimum wages dependent on work quality for those with disabilities. This definition is vague and allows for large amounts of discretion, when the argument could be made that two employees could produce two very different levels of work without facing any type of disability. Lastly, the spread of these types of programs globally is the ultimate goal, as the figures that were presented within this discussion are merely representative of the United States.

These programs have grown substantially over the last few years and have continued to incorporate more students onto college campuses, yet there is still a societal halt that is holding them back from fully inclusive practices. While these types of programs might not be the best fit for all students with intellectual and developmental disabilities, it is an option that should be available, because in the end, everyone deserves the opportunity to attend college.

WORKS CITED

The ARC of Pennsylvania. "Advocacy for People with Disabilities: Harrisburg." 2019. <https://thearc-pa.org/>.

Fewox, Keli. "A Multiple Case Study Examining the Challenges and Successes in the Development and Implementation of Transition and Post-Secondary Education Programs for Students with Intellectual Disabilities." Doctoral Dissertation, Liberty University, 2019.

Gargiulo, Richard M. and Emily C. Bouck. *Instructional Strategies for Students with Mild, Moderate, and Severe Intellectual Disability*. Los Angeles: Sage, 2018.

Grigal, Meg, Debra Hart, Frank Smith, Clare Papay and Daria Domin. "Year Three Annual Report of the TPSID Model Demonstration Projects

(2017–2018)." Boston: University of Massachusetts, *Institute for Community Inclusion*, 2018.

Martin, Michelle E. *Introduction to Human Services: Through the Eyes of Practice Settings*. New York: Pearson Education, 2014.

NIH. "Intellectual and Developmental Disabilities (IDDs): Condition Information." U.S. Department of Health and Human Services, 2016. <https://www.nichd.nih.gov/health/topics/idds/conditioninfo/default>.

Ryan, Joseph B., Kristina N. Randall, Erica Walters and Virginia Morash-Macneil. "Employment and Independent Living Outcomes of a Mixed Model Post-Secondary Education Program for Young Adults with Intellectual Disabilities." *Journal of Vocational Rehabilitation* 50, no. 1 (2019). <https://doi.org/10.3233/jvr-180988>.

Uditsky, Bruce and Elizabeth Hughson. "Inclusive Postsecondary Education—An Evidence-Based Moral Imperative." *Journal of Policy and Practice in Intellectual Disabilities* 9, no. 4 (2012): 298–302. <https://doi.org/10.1111/jppi.12005>.

Uditsky, Bruce and Elizabeth Hughson. "Inclusive Post-Secondary Education for Students with Significant Developmental Disabilities: Challenging Legal, Moral and Pragmatic Assumptions." 2006.

U.S. Department of Education. "Transition and Post-secondary Programs for Students with Intellectual Disabilities." 2015. <https://www2.ed.gov/programs/tpsid/index.html>.

U.S. Department of Education, National Center for Education Statistics. "Digest of Education Statistics, 2017." 2017. <https://nces.ed.gov/fastfacts/display.asp?id=84>.

U.S. Department of Labor Wage and Hour Division. "PDF." 2008.

- Wehman, Paul. *Essentials of Transition Planning*. Baltimore: Brookes Publishing Co., 2011.
- Wehmeyer, Michael L. and Karrie A. Shogren. *Handbook of Research-Based Practices for Educating Students with Intellectual Disability*. New York: Routledge, Taylor & Francis Group, 2017.
- Wehmeyer, Michael L., Ivan Brown, Maire Ede Percy, Karrie A. Shogren and Wai Lun Alan Fung. *A Comprehensive Guide to Intellectual and Developmental Disabilities*. Baltimore: Paul H. Brookes Publishing, Co., 2017.

Faulty Eyewitness Testimony and its Impacts

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INTRODUCTION

The criminal justice system is constantly being reformed to meet the standards of society and safeguard the citizens of the United States. The court system has especially gone through revisions and reformations as the legislative branch of government continues to create policies and statutes that affect it. Within the court system, the jury is charged with defining the facts of each case and rendering a verdict based on the evidence displayed during the trial. The prosecution and the defense attorneys put on a spectacle for the jury within the confinements of the adversarial court system. The prosecution utilizes a “toolkit” in which the prosecutor uses an array of methods to attempt to convince the jury to render a guilty verdict. There are many factors used to persuade a jury. One such method is to use hard evidence found at the crime scene. Evidence such as blood, hair fibers, and fingerprints are valued by those on a jury panel.¹ Another is to have witnesses and public officials called to the stand in court to talk about the defendant’s character and criminal history. One method that is frequently used which alters the jury from factfinder to empathetic justice seeker is when the prosecution uses the narrative of the victim or other eyewitnesses.² Utilizing victim testimony or eyewitness testimony puts an emotional burden on the jury. Eyewitness testimony is a leading cause for convictions used by prosecutors in the United States, however, it is often unreliable due to misidentification.³

Multiple aspects of jury identification factor into the process that leads to wrongful convictions. The selection of the jury can play a role in preventing

1 J. Carey et al., “Panel One: Analyzing New Technological Advancements in Biological and Physical Evidence,” *Albany Law Journal of Science & Technology* 27, no. 2 (2017): 140-163.

2 D. Walsh, “The Dangers of Eyewitness Identification: A Call for Greater State Involvement to Ensure Fundamental Fairness,” *Boston College Law Review* 54, no. 3 (2013): 1415–1453.

3 J. T. Wixted and G. L. Wells, “The Relationship Between Eyewitness Confidence and Identification Accuracy: A New Synthesis,” *Psychological Science in the Public Interest* 18, no. 1 (2017): 10–65.

justice from being served as biases come into play. One example of this is the Crime Scene Investigation Effect (CSI), in which juries expect forensic evidence to be presented in trials. When this type of evidence is presented in such a manner, the jury tends to assume that the defendant is guilty.⁴ This is just one example of how juries can be biased. Another is their belief in the memory of victims and other eyewitnesses despite the numerous variables that can affect their memories.⁵ Ultimately, the prosecutor has the power, through discretion, to utilize eyewitness testimony as their source to win a trial, and despite the knowledge that their testimonies can be faulty, this tactic is often successful. However, the usage of and reliance on eyewitness testimony needs to be stopped and made sure that this is not the leading evidence in a case that leads to a conviction. The functionalist theory details how issues that are not functional for society must end and something more useful must arise and take its place. Per this theory, reliance on eyewitness testimony must be curbed and juries must be as impartial as they claim.

DISCUSSION

One of the leading causes for innocent suspects to end up in the criminal justice system is eyewitness testimony.⁶ A great deal is relied upon when looking into the memory of witnesses, especially the victims of crimes. The prosecution utilizes this guided truth to their advantage. Eyewitnesses may unintentionally misidentify the defendant due to being mistaken in their memory or being misled by the police investigators, or they may intentionally misidentify them if it is to their benefit. If misidentified, suspects face all sorts of scrutiny, including police investigations and the creation of biases due to the nature of the crime of which they are accused. If the prosecutor feels there is a case, then the suspect must go through the difficulties of the criminal justice system, such as the pretrial events, the plea bargain stage, and, if necessary, a trial. Once they get to the trial stage of the process, the jury may have different biases that will play against the defendant, such as cognitive and motivational biases. Motiva-

4 G. Rhineberger-Dunn, S. J. Briggs and N. E. Rader, “The CSI Effect, DNA Discourse, and Popular Crime Dramas,” *Social Science Quarterly* 98, no. 2 (2017): 532-547.

5 C. Stenzel, “Eyewitness Misidentification: A Mistake that Blinds Investigations, Sways Juries, and Locks Innocent People Behind Bars,” *Creighton Law Review* 50, no. 3 (2017): 515–532.

6 B. Lowrey-Kinberg et al., “Origin of Implication: How Do Innocent Individuals Enter the Criminal Justice System?,” *Crime & Delinquency* 65, no. 14 (2019): 1949–1975.

tional bias is when the jury convicts the defendant because they are moved by the story of the victim and feel a need to punish the accused.⁷ Cognitive biases derive from human experience and the experience of a juror could drastically impact how they perform their duties.⁸ When a jury convicts due to mistakes caused by biases, they wrongfully convict an innocent defendant. The only way to correct this wrong is through an appeal and subsequent attempts to prove that jury bias and faulty testimonies led to the conviction of the defendant.

Studies have been conducted to assess eyewitness testimony based on too many perpetrator options or testifying against the potential perpetrator and juries rendering guilty verdicts on the premise of the eyewitness testimony alone.⁹ Not every person who identifies an offender is innocent, but it is imperative to be cognizant of the research and circumstances surrounding the testimony of the witnesses. The National Research Council identifies variables related to the process of utilizing the memory of the eyewitnesses as estimator variables and system variables.¹⁰ Estimator variables are circumstances that exist outside of the influence of the justice system.¹¹ For example, if someone commits a robbery at night in a dark alley, the victim may only be able to identify small characteristics pertaining to the perpetrator. Someone who is male, with brown hair, brown eyes, and who is 5 foot 11 inches could describe a large population, hence making it difficult to identify the perpetrator. System variables, however, correlate to the biases that can come from the law enforcement interference when trying to make an accurate identification.¹² If officers conduct a lineup and each one fits the description, it can be hard for the victim to make an accurate identification.¹³ In 2005, 88% of the defendants who were convicted of rape, sentenced to jail, and were later exonerated were wrong-

7 H. Freeman, "The Presumption of Jury Competence: Sarrazin's New Acknowledgment of Cognitive Biases and its Implications for Counsel," *University of Toronto Faculty Law Review* 71, no. 2 (2013).

8 Ibid.

9 G. Berman, D. Narby and B. Cutler, "Effects of Inconsistent Eyewitness Statements on Mock-Jurors' Evaluations of the Eyewitness, Perceptions of Defendant Culpability and Verdicts," *Law and Human Behavior* 19, no. 1 (1995): 79-88.

10 National Research Council, *Identifying the Culprit: Assessing Eyewitness Identification* (Washington, DC: National Academies Press, 2014).

11 Ibid.

12 D. Walsh, "The Dangers of Eyewitness Identification."

13 C. Stenzel, "Eyewitness Misidentification."

fully convicted due to an underlying misidentification error made by the victim.¹⁴ Most juries, in cases where the victim identifies their alleged offender, are already leaning towards guilty which leads to a conviction.

Another form of system variable is the utilization of photo arrays. Commonly, police use either a simultaneous photo array or sequential photo arrays.¹⁵ A simultaneous photo array will consist of a few known suspects that resemble the description given by the victim. This can skew victim memory on the basis that all of the photos will look the same being that they are still pictures so the victim can have a hard time identifying the correct photo. Sequential photos, which are photos shown one after another, can also have the same effect. Wixted and Wells note that at the moment when a victim identifies the offender, it must be done with high confidence to ensure higher accuracy.¹⁶ If the victim has a slight doubt when making the identification, then the lineup should cease from there. When victims are forced to make an identification from a lineup or photos, it forces the victim to make a quick decision of whether or not it was the perpetrator.¹⁷ If officers decide to accept the chosen individual as the offender, then it will, in turn, instill higher confidence in the victim when it comes to identifying that person as the offender in court. This type of reinforcement by the criminal justice system can ensure self-confidence within the victim and cause a jury to wrongfully convict.

The memory of the victim can also play a part if the correct steps are not taken after the crime has been committed. Once the crime was committed, the victim is more likely to have high confidence in the description and identification of the offender if it is done immediately following the crime.¹⁸ If too much time has elapsed, then the memory of the victim can decrease and become malleable.¹⁹ This is common because the brain will remember events as they were perceived, not necessarily as they happened. Currently, over 90% of cases result in a plea agreement.²⁰

14 Ibid.

15 J. T. Wixted and G. L. Wells, "The Relationship Between Eyewitness Confidence and Identification Accuracy."

16 Ibid.

17 D. Walsh, "The Dangers of Eyewitness Identification."

18 J. T. Wixted, "Time to Exonerate Eyewitness Memory," *Forensic Science International* 292 (2018): e13-e15.

19 J. T. Wixted and G. L. Wells, "The Relationship Between Eyewitness Confidence and Identification Accuracy."

20 D. W. Neubauer and H. F. Fradella, *America's Courts and the*

Errors in testimony, however, have led to more research being conducted and the advent of studying DNA as a forensic science has led to the overturning of wrongful convictions.²¹ With the study of DNA, which is unique to every living organism, comes a method that can now be used as hard evidence to eliminate any doubt that the jury and prosecution may have.

It has become well known amongst researchers that there are faults in the identification process and some states have installed new procedures to mitigate against faulty identification. A term known as blind administration allows for a different method with less bias from the system when the police are talking to the victim.²² Instead, another officer in the department should administer the photo array and lineup so that there is no coercion.

Wrongful convictions are an unfortunate side effect of the humanistic nature of the court system. The system is not free of flaws, but there are solutions that could potentially fix some of these flaws. Eyewitness misidentification is the leading cause of wrongful convictions in the United States.²³ The main reason for this is because memory is malleable and often not as reliable as people believe their memories to be, yet juries frequently accept what it presented to them from these witnesses. Therefore, safeguards have been put into place, such as judges giving juries directions on witness testimony before their deliberation and allowing experts to testify against the reliability of eyewitness identification, but these still have not been enough to change the narrative.²⁴ Criminal court judges need to be trained on the different factors surrounding testimonial error so that it can be taken into account by the court. Juries need to stop relying so heavily on eyewitnesses. Prosecutors need to have better arguments than just the testimony of eyewitnesses and the courts need to replace their archaic blind acceptance of this eyewitness testimony.

Wrongful convictions are proof that the criminal justice system needs to continue to improve for so-

Criminal Justice System (Boston: Cengage, 2017).; J. T. Wixted and G. L. Wells, "The Relationship Between Eyewitness Confidence and Identification Accuracy."

21 J. T. Wixted and G. L. Wells, "The Relationship Between Eyewitness Confidence and Identification Accuracy."

22 Ibid.

23 C. Stenzel, "Eyewitness Misidentification."

24 C. Stenzel, "Eyewitness Misidentification."

ciety to properly function. Society relies on a just and equitable criminal justice system, and since innocent people are being convicted and sentenced to prison, it is clear that this system has a long way to go. The functionalist theory provides an argument for why this system must be fixed. The functionalist theory looks through the lens of multiple theorists, observing how society functions as a whole and its interrelated parts. If some aspect of the criminal justice system is not working, then it must be forgotten and something else must emerge to take its place. Fixing the entire criminal justice system might not be plausible, but fixing the issues surrounding wrongful convictions are. Most importantly, solving the faulty eyewitness testimony problem can be taken care of so that other, more credible forms of evidence can be used in courts, thus providing a fairer trial for defendants.

CONCLUSION

There are many flaws with eyewitness testimony, specifically with the ability of eyewitnesses to accurately remember the events they witnessed. DNA evidence is often the only way that innocent suspects who are wrongfully convicted due to eyewitness testimony are exonerated. Juries carry the duty of impartiality, which in turn prevents bias from affecting their decisions. Ultimately, the goal should be to limit the amount of wrongful convictions that unfortunately unfold each year due to eyewitness testimony. To alleviate the issue of wrongful conviction by eyewitness testimony, it is imperative to understand the implications of identification. Solving the problem of faulty eyewitness testimony can relieve law enforcement of their duties to identify by making the jury more aware of their duties. Misidentification of perpetrators is a cause of wrongful conviction, which can be alleviated by understanding and acknowledgement of eyewitness testimony.

WORKS CITED

Berman, G., D. Narby and B. Cutler. "Effects of Inconsistent Eyewitness Statements on Mock-Jurors' Evaluations of the Eyewitness, Perceptions of Defendant Culpability and Verdicts." *Law and Human Behavior* 19, no. 1 (1995): 79-88.

Carey, J., S. Hogan, M. Mourges and A. Willey. "Panel One: Analyzing New Technological

- Advancements in Biological and Physical Evidence.” *Albany Law Journal of Science & Technology* 27, no. 2 (2017): 140-163.
- Freeman, H. “The Presumption of Jury Competence: Sarrazin’s New Acknowledgment of Cognitive Biases and its Implications for Counsel.” *University of Toronto Faculty Law Review* 71, no. 2 (2013). <https://link.gale.com.ezaccess.libraries.psu.edu/apps/doc/A361846793/LT?u=carl39591&sid=LT&x-id=5b50b0c5>.
- Lowrey-Kinberg, B., S. L. Senn, K. Dunn, J. B. Gould and K. Hail-Jares. “Origin of Implication: How Do Innocent Individuals Enter the Criminal Justice System?” *Crime & Delinquency* 65, no. 14 (2019): 1949–1975. doi: 10.1177/0011128718793618.
- National Research Council. *Identifying the Culprit: Assessing Eyewitness Identification*. Washington, DC: National Academies Press, 2014.
- Neubauer, D. W. and H. F. Fradella. *America’s Courts and the Criminal Justice System*. Boston: Cengage, 2017.
- Rhineberger-Dunn, G., S. J. Briggs and N. E. Rader. “The CSI Effect, DNA Discourse, and Popular Crime Dramas.” *Social Science Quarterly* 98, no. 2 (2017): 532-547. doi:10.1111/ssqu.12289.
- Stenzel, C. “Eyewitness Misidentification: A Mistake that Blinds Investigations, Sways Juries, and Locks Innocent People Behind Bars.” *Creighton Law Review* 50, no. 3 (2017): 515–532. <http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=123906422&site=e-host-live&scope=site>.
- Walsh, D. “The Dangers of Eyewitness Identification: A Call for Greater State Involvement to Ensure Fundamental Fairness.” *Boston College Law Review* 54, no. 3 (2013): 1415–1453. <http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=89007500&site=e-host-live&scope=site>.
- Wixted, J. T. “Time to Exonerate Eyewitness Memory.” *Forensic Science International* 292 (2018): e13–e15. DOI:10.1016/2018.08.018.
- Wixted, J. T. and G. L. Wells. “The Relationship Between Eyewitness Confidence and Identification Accuracy: A New Synthesis.” *Psychological Science in the Public Interest* 18, no. 1 (2017): 10–65. DOI: 10.1177/1529100616686966.

Lost Voices in America

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A felony is defined as the most severe type of crime within society and punishment can range from a year or more in prison to a death sentence.¹ Felony disenfranchisement is “the removal of the right to vote following a felony conviction.”² Thus, in states that have felony disenfranchisement laws, when an individual has been convicted of a felony and sent to prison they are not able to vote whilst serving their time. In some states, this may even extend to individuals who have been released from prison but remain on probation or parole. Ironically, despite the historical progress pertaining to suffrage, felons and ex-felons continue to be stripped of their right to vote through felon disenfranchisement laws. Embedded in this discussion is the historical tension that has existed between races that motivated the disenfranchisement of felons and ex-felons.³ This tension helps to articulate the narrative that felon disenfranchisement provisions were a tool to decimate the sociopolitical influence of African Americans. Although felon disenfranchisement laws appear race-neutral for African Americans on the surface, this paper will highlight the true historical intentions of the law, the disparities in punishment and disenfranchisement, and the ramifications of the law today.

HISTORY OF FELON DISENFRANCHISEMENT LAWS

Initially the disenfranchisement of African Americans was legal, until 1870 when the Fifteenth Amendment declared that the “right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.”⁴ How-

1 Bureau of Justice Statistics, “Felony Defendants,” accessed March 6, 2020.

2 Bridgett A. King and Laura Erickson, “Disenfranchising the Enfranchised: Exploring the Relationship between Felony Disenfranchisement and African American Voter Turnout,” *Journal of Black Studies* 47, no. 8 (July 2016): 799.

3 Ryan Scott King, “Jim Crow Is Alive and Well in the 21st Century: Felony Disenfranchisement and the Continuing Struggle to Silence the African-American Voice,” *Souls* 8, no. 2 (July 2006): 9.; See also Christopher Uggen, “Felon Voting Rights and the Disenfranchisement of African Americans,” *Souls* 5, no. 4 (Dec. 2003): 47.

4 Liette Gidlow, “The Sequel: The Fifteenth Amendment, The Nineteenth Amendment, and Southern Black Women’s Struggle to Vote,” *The Journal of the Gilded Age and Progressive Era* 17,

ever, Section 2 of the Fourteenth Amendment provides an exception to voting eligibility, which is “participation in rebellion, or other crime.”⁵ It is this section that allowed felon disenfranchisement laws to permeate the United States during and following Reconstruction.

Reconstruction was the era following the Civil War when African Americans became politically empowered and sought social advancements.⁶ Southern states could not outwardly ban African Americans from voting (per the Fifteenth Amendment), therefore during this period other tactics were employed to reduce voting such as intimidation, violence, poll taxes, and literacy tests.⁷ Eventually, these barriers were outlawed by the Voting Rights Act of 1965.⁸

The Fifteenth Amendment and the Voting Rights Act of 1965 made attempts to reduce the black vote vulnerable to scrutiny by the courts; in order to avoid legal scrutiny, states began to “tailor their disenfranchisement laws to apply to offenses that were perceived to be committed primarily by African American offenders.”⁹ These offenses included things such as burglary, theft, wife-beating, and property crimes.¹⁰ As the enfranchisement of African Americans advanced during Reconstruction, so did criminal disenfranchisement.¹¹ For instance, between 1850 and 2000 states were more likely to pass restrictive felon disenfranchisement laws if these states had larger proportions of non-whites in their prison population.¹² Simply put, as African Americans began to gain the right to vote,

no. 3 (July 2018): 434.

5 Edward M. Burmilla, “Voter Turnout, Felon Disenfranchisement and Partisan Outcomes in Presidential Elections, 1988–2012,” *Social Justice Research* 30, no. 1 (Mar. 2017): 74.

6 Lauren Latterell Powell, “Concealed Motives: Rethinking Fourteenth Amendment and Voting Rights Challenges to Felon Disenfranchisement,” *Michigan Journal of Race & Law* 22, no. 2 (Spring, 2017): 387.

7 Gidlow, “The Sequel,” 434.

8 Paul Finkelman, “The Necessity of the Voting Rights Act of 1965 and the Difficulty of Overcoming almost a Century of Voting Discrimination,” *Louisiana Law Review* 76, no. 1 (2015): 190.

9 Ryan Scott King, “Jim Crow Is Alive and Well in the 21st Century,” 9.

10 King, “Jim Crow Is Alive and Well in the 21st Century,” 9.; See also

Christopher Uggen, “Felon Voting Rights and the Disenfranchisement of African Americans,” *Souls* 5, no. 4 (Dec. 2003): 49.

11 Richard M. Re and Christopher M. Re, “Voting and Vice: Criminal Disenfranchisement and the Reconstruction Amendments,” *The Yale Law Journal* 121, no. 7 (May 2012): 1590.

12 Jeff Manza and Christopher Uggen, “Punishment and Democracy: Disenfranchisement of Nonincarcerated Felons in the United States,” *Perspectives on Politics* 2, no. 3 (2004): 493.

those convicted of crimes began to lose their right to vote because the criminal justice system was used as a tool to promote white supremacy through felon disenfranchisement laws, among many other tactics.¹³

Historically, there was also a link between the rise in political activity of African Americans and disenfranchisement laws.¹⁴ The increasing socio-political power of African Americans was met with dissatisfaction and as a response, several states began to adapt felon disenfranchisement laws¹⁵ and “after Reconstruction, several Southern states carefully rewrote their criminal disenfranchisement provisions with the express intent of excluding blacks from the suffrage.”¹⁶ These laws appeared to be race-neutral, which means that its language did not overtly discriminate against a particular group, but in fact “despite being race-neutral, criminal justice statutes, unintentionally or not, become a code for communicating racial information without appearing overtly racist.”¹⁷ The appearance of race-neutrality also makes it difficult for felon disenfranchisement laws to be challenged in court because plaintiffs are required to “demonstrate that the law is written explicitly with racial animus.”¹⁸ Therefore, “the courts, intentionally or inadvertently, have provided cover for legislation with race-neutral language but discriminatory effects.”¹⁹

Several disenfranchisement provisions were implemented with the intent to discriminate against blacks but states “revised” them upon being scrutinized by the court. For instance, the Supreme Court declared Alabama’s original felon disenfranchisement provisions unconstitutional because of its clear discriminatory intent.²⁰ The intent of tailoring their disenfranchisement laws was to establish white supremacy in the state to the extent that it is permissible by the Constitution, however, although Alabama narrowed

13 Kevin Drakulich et al., “Race, Justice, Policing, and the 2016 American Presidential Election,” *Du Bois Review: Social Science Research on Race* 14, no. 1 (Spring 2017): 9.

14 Aviram Hadar, Allyson Bragg and Chelsea Lewis, “Felon Disenfranchisement,” *Annual Review of Law and Social Science* 13, no. 1 (Oct. 2017): 305.

15 Powell, “Concealed Motives,” 386.

16 Alec C. Ewald, “Civil Death: The Ideological Paradox of Criminal Disenfranchisement Law in the United States,” *Wisconsin Law Review*, no. 5 (2002): 1065.

17 David Wilson, Darren Davis and Michael Owens, “How Racial Attitudes and Ideology Affect Political Rights for Felons,” *Du Bois Review* 12, no. 1 (2015): 76.

18 Burmilla, “Voter Turnout,” 75.

19 Burmilla, “Voter Turnout,” 75.

20 Nora Demleitner, “Felon Disenfranchisement,” *The University of Memphis Law Review* 49, no. 4 (2019): 1281.

its felon disenfranchisement provisions, “there is still substantial exclusion.”²¹ Some state leaders even overtly revealed the intentions of their implementation of felon disenfranchisement laws. In 1906, a Virginia lawmaker said:

This [disenfranchisement] plan will eliminate the darkey as a political factor in this state in less than five years ... so that in no county of the Commonwealth will there be the least concern for the complete supremacy of the white race in the affairs of government.²²

Despite these racist historical implications, the Supreme Court continues to uphold that felon disenfranchisement laws are permissible. In *Washington v. Davis* the court concluded that although Florida’s 1885 felon disenfranchisement provision was motivated by racist intent, there was no proof that Florida’s 1968 felon disenfranchisement provision had racist intent, so it was upheld.²³ Likewise, in *Cotton v. Fordice* the court decided that although Mississippi’s original felon disenfranchisement provision had the intention of specifically disenfranchising African Americans, its 1968 amendment did not have racist intent because it included murder and rape (not seen as black crimes) and excluded robbery (which was seen as a black crime).²⁴ The standards that the courts set to prove racist intent was fairly low. In essence, states just had to ensure that their felon disenfranchisement provisions appeared race-neutral to avoid scrutiny from the courts. This is reflected in the courts giving Mississippi and Florida a second chance to change the rhetoric in their provisions, although it was clear what their original intentions were. Recently, some states have begun to amend their felon disenfranchisement provisions, however, today 48 states still have some form of felon disenfranchisement laws.²⁵ Specifically, 16 states disenfranchise felons only while incarcerated, 21 states disenfranchise felons while incarcerated and while on parole and/or probation, and 11 states disenfranchise felons indefinitely for some crimes.²⁶ The racial tensions that existed in the United States allowed disenfranchisement laws to perpetuate. Ul-

21 Demleitner, “Felon Disenfranchisement,” 1281.

22 Ludovic Blain, “One Person, No Vote: Felony Disenfranchisement Strips People of Color of Political Power,” *Race, Poverty & the Environment* 10, no. 2 (2003): 50.

23 Powell, “Concealed Motives,” 390.

24 Powell, “Concealed Motives,” 391.

25 National Conference of State Legislatures, “Felon Voting Rights,” last modified October 14, 2019.

26 National Conference of State Legislatures, “Felon Voting Rights.”

timately, these racial tensions led to the seclusion of African Americans from the rest of society by denying them the basic citizenship right of voting.

DISPARITIES IN PUNISHMENT AND DISENFRANCHISEMENT

The rate of African Americans imprisoned is disproportionately high in comparison to that of whites, which in turn costs a disproportionate number of African Americans their ability to vote.²⁷ The imprisonment rate of African Americans is 5.9 times the rate of imprisonment for white adults, for both serious and non-serious offenses.²⁸ Consequently, disenfranchisement is “proportional to how our criminal justice system is dramatically and disproportionately racially skewed.”²⁹ In addition to these racial disparities in criminal punishment, “in 2016 African Americans were four times more likely to be disenfranchised than whites”³⁰ and 13% of the African American male population are prohibited from voting due to a felony conviction.³¹ More generally, the rate of disenfranchisement of African Americans is 7 times higher than that of other groups.³² As the incarcerated population rises in the United States, so does the number of people who are ineligible to vote. Since African Americans are unequally incarcerated in comparison to other groups, they are also then disenfranchised at higher rates than other groups. Essentially, the discriminatory intentions of felon disenfranchisement laws continue to manifest in contemporary America with African Americans disparately being affected by these laws just as they were immediately following the Civil War.

RAMIFICATIONS OF FELON DISENFRANCHISEMENT LAWS

From 1972 to 2000 if not for their disenfranchisement, 35% of felons would have voted in presidential elections and 24% of them would have participated in senate elections.³³ This number is even higher

27 David Cottrell et al. “Mortality, Incarceration, and African American Disenfranchisement in the Contemporary United States,” *American Politics Research* 47, no. 2 (Mar 2019): 195.

28 The Sentencing Project, “Report to the United Nations on Racial Disparities in the U.S Criminal Justice System,” published on April 19, 2018.

29 Demleitner, “Felon Disenfranchisement,” 1281.

30 Powell, “Concealed Motives,” 384.

31 Terrance Ruth, Jonathan Matusitz and Demi Simi, “Ethics of Disenfranchisement and Voting Rights in the U.S.: Convicted Felons, the Homeless, and Immigrants.” *American Journal of Criminal Justice* 42, no. 1 (Mar 2017): 60.

32 Jonathan Purtle, “Felon Disenfranchisement in the United States: A Health Equity Perspective,” *American Journal of Public Health* 103, no. 4 (Apr. 2013): 632.

33 Christopher Uggen and Jeff Manza, “Democratic Contrac-

tion for African Americans,³⁴ with studies finding that “disenfranchisement policies have a significant independent effect on voting rights in the black community and do not have a similar effect on white voters.”³⁵ As a result of disenfranchisement provisions, the voting strength of racial minorities is therefore diminished.³⁶ Although limited in the number of elections, felon disenfranchisement affects not only the political power of the individual but also the collective political power of the communities and states to which they return after the completion of their sentences.³⁷

Not only do felon disenfranchisement laws prohibit the political participation of African Americans on a larger scale, but the number of African Americans left voiceless takes a toll on the electoral process. A study found that Democratic candidates tend to be more popular amongst African Americans and that 7 out of every 10 of the votes of felons and ex-felons would have been in favor of Democratic candidates.³⁸ That same study then concluded that felon disenfranchisement did give a small advantage to Republicans in “every presidential and senatorial election from 1972-2000.”³⁹ Similarly, allowing the voting participation of felons and ex-felons increases the vote share of Democratic candidates in House elections.⁴⁰

CONCLUSION

Proponents of felon disenfranchisement laws like to argue that these provisions are race-neutral. While it may be true that these laws are race-neutral on the surface, their historical implications and the ways in which they have disparately impacted African Americans in both historical and contemporary con-
Americans in both historical and contemporary con-
tion?: Political Consequences of Felon Disenfranchisement in the United States,” *American Sociological Review* 67, no. 6 (Dec. 2002): 786.

34 King and Erickson, “Disenfranchising the Enfranchised,” 800-801.

35 Holona Leanne Ochs, “‘Colorblind’ Policy in Black and White: Racial Consequences of Disenfranchisement Policy,” *Policy Studies Journal* 34, no. 1 (Feb 2006): 81.

36 Angela Behrens, Christopher Uggen and Jeff Manza, “Ballot Manipulation and the ‘Menace of Negro Domination’: Racial Threat and Felon Disenfranchisement in the United States, 1850–2002,” *American Journal of Sociology* 109, no. 3 (Nov. 2003): 599.

37 King and Erickson, “Disenfranchising the Enfranchised,” 804.

38 Uggen and Manza, “Democratic Contraction?,” 786.

39 Uggen and Manza, “Democratic Contraction?,” 787.

40 Tilman Klumpp, Hugo M. Mialon and Michael A. Williams, “The Voting Rights of Ex-Felons and Election Outcomes in the United States,” *International Review of Law & Economics* 59, (Sept. 2019): 41.

texts challenge this notion of race-neutrality. Racial tensions that have existed in America consistently lead to the stratification of who can vote and who cannot vote on the basis of race. Historically, this stratification was more obvious. States adopted, expanded, or made their existing felon disenfranchisement laws stricter at the same time that the courts began to establish the rights of African Americans. Although the courts acknowledged that these initial disenfranchisement provisions were masked in racial discrimination, all the states had to do was change a few words for their statutes to appear race-neutral and be upheld by the courts. Today, these laws are still permissible and continue to negatively impact African Americans at an alarming rate in comparison to other groups, all while keeping up the appearance of being race-neutral. Consequently, not only are African American votes diminished, but so is their representation in America's democracy. The history of felon disenfranchisement laws and their continued impact on African Americans demonstrate America's racial disparities that persist to this day.

WORKS CITED

- Aviram, Hadar, Allyson Bragg, and Chelsea Lewis. "Felon Disenfranchisement." *Annual Review of Law and Social Science* 13, no. 1 (Oct. 2017): 295–311. doi:10.1146/annurev-lawsocsci-110316-113558.
- Behrens, Angela, Christopher Uggen, and Jeff Manza. "Ballot Manipulation and the 'Menace of Negro Domination': Racial Threat and Felon Disenfranchisement in the United States, 1850–2002." *American Journal of Sociology* 109, no. 3 (Nov 2003): 559–605. doi:10.1086/378647.
- Blain, Ludovic. "One Person, No Vote: Felony Disenfranchisement Strips People of Color of Political Power." *Race, Poverty & the Environment* 10, no. 2 (2003): 49–51. <http://www.jstor.org/stable/41554399>.
- Bureau of Justice Statistics. "Felony Defendants." Accessed March 6, 2020. <https://www.bjs.gov/index.cfm?ty=tp&tid=231>.
- Burmilla, Edward M. "Voter Turnout, Felon Disenfranchisement and Partisan Outcomes in Presidential Elections, 1988–2012." *Social Justice Research* 30, no. 1 (Mar. 2017): 72–88. doi:10.1007/s11211-017-0277-2.

- Cottrell, David, Michael C. Herron, Javier M. Rodriguez, and Daniel A. Smith. "Mortality, Incarceration, and African American Disenfranchisement in the Contemporary United States." *American Politics Research* 47, no. 2 (Mar 2019): 195–237. doi:10.1177/1532673X18754555.
- Demleitner, Nora. "Felon Disenfranchisement." *The University of Memphis Law Review* 49, no. 4 (2019): 1275–1290. <http://ezaccess.libraries.psu.edu/login?url=https://search-proquest-com.ezaccess.libraries.psu.edu/docview/2250568410?accountid=13158>.
- Drakulich, Kevin, John Hagan, Devon Johnson, and Kevin H. Wozniak. "Race, Justice, Policing, and the 2016 American Presidential Election." *Du Bois Review: Social Science Research on Race* 14, no. 1 (Spring 2017): 7–33. doi:10.1017/S1742058X1600031X.
- Ewald, Alec C. "Civil Death": The Ideological Paradox of Criminal Disenfranchisement Law in the United States." *Wisconsin Law Review*, no. 5 (2002): 1045–1138. <https://heinonline-org.ezaccess.libraries.psu.edu/HOL/Page?i-name=&handle=hein.journals/wlr2002&collection=&page=1045&collection=journals#>.
- Finkelman, Paul. "The Necessity of the Voting Rights Act of 1965 and the Difficulty of Overcoming almost a Century of Voting Discrimination." *Louisiana Law Review* 76, no. 1 (2015): 181–223. https://heinonline-org.ezaccess.libraries.psu.edu/HOL/Page?collection=journals&handle=hein.journals/louilr76&id=187&men_tab=srchresults.
- Gidlow, Liette. "The Sequel: The Fifteenth Amendment, The Nineteenth Amendment, and Southern Black Women's Struggle to Vote." *The Journal of the Gilded Age and Progressive Era* 17, no. 3 (July 2018): 433–449. doi:10.1017/S1537781418000051.
- King, Ryan Scott. "Jim Crow Is Alive and Well in the 21st Century: Felony Disenfranchisement and the Continuing Struggle to Silence the African-American Voice." *Souls* 8, no. 2 (July 2006): 7–21. doi:10.1080/10999940600680507.
- King, Bridgett A. and Laura Erickson. "Disenfran-

- chising the Enfranchised: Exploring the Relationship between Felony Disenfranchisement and African American Voter Turnout.” *Journal of Black Studies* 47, no. 8 (2016): 799-821. <https://doi.org/10.1177/0021934716659195>.
- Klumpp, Tilman, Hugo M. Mialon and Michael A. Williams. “The Voting Rights of Ex-Felons and Election Outcomes in the United States.” *International Review of Law & Economics* 59 (Sept. 2019): 40-56. doi:10.1016/j.irl.2019.03.002.
- Manza, Jeff and Christopher Uggen. “Punishment and Democracy: Disenfranchisement of Nonincarcerated Felons in the United States.” *Perspectives on Politics* 2, no. 3 (2004): 491–505. <http://www.jstor.org/stable/3688812>.
- National Conference of State Legislatures. “Felon Voting Rights.” Last modified October 14, 2019. <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.
- Ochs, Holona Leanne. “‘Colorblind’ Policy in Black and White: Racial Consequences of Disenfranchisement Policy.” *Policy Studies Journal* 34, no. 1 (Feb 2006): 81-93. doi:10.1111/j.1541-0072.2006.00146.x.
- Powell, Lauren Latterell. “Concealed Motives: Rethinking Fourteenth Amendment and Voting Rights Challenges to Felon Disenfranchisement.” *Michigan Journal of Race & Law* 22, no. 2 (Spring, 2017): 383-410. <http://ezaccess.libraries.psu.edu/login?url=https://search-proquest-com.ezaccess.libraries.psu.edu/docview/1973006117?accountid=13158>.
- Purtle, Jonathan. “Felon Disenfranchisement in the United States: A Health Equity Perspective.” *American Journal of Public Health* 103, no. 4 (Apr. 2013): 632–37. doi:10.2105/AJPH.2012.300933.
- Re, Richard M. and Christopher M. Re. “Voting and Vice: Criminal Disenfranchisement and the Reconstruction Amendments.” *The Yale Law Journal* 121, no. 7 (May 2012): 1584-1670. <https://go-gale.com.ezaccess.libraries.psu.edu/ps/i.do?p=LT&u=carl39591&id=GALE%-7CA290520553&v=2.1&it=r&sid=summon>.
- Ruth, Terrance, Jonathan Matusitz and Demi Simi. “Ethics of Disenfranchisement and Voting Rights in the U.S.: Convicted Felons, the Homeless, and Immigrants.” *American Journal of Criminal Justice* 42, no. 1 (Mar 2017): 56-68. doi:10.1007/s12103-016-9346-6.
- The Sentencing Project. “Report to the United Nations on Racial Disparities in the U.S Criminal Justice System.” Published April 19, 2018. <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.
- Uggen, Christopher. “Felon Voting Rights and the Disenfranchisement of African Americans.” *Souls* 5, no. 4 (Dec. 2003): 47–55. doi:10.1080//10999940390463365.
- Uggen, Christopher and Jeff Manza. “Democratic Contraction?: Political Consequences of Felon Disenfranchisement in the United States.” *American Sociological Review* 67, no. 6 (Dec. 2002): 777-803. doi:10.2307/3088970.
- Wilson, David, Darren Davis and Michael Owens. “How Racial Attitudes and Ideology Affect Political Rights for Felons.” *Du Bois Review* 12, no. 1 (2015): 73-93. doi:10.1017/S1742058X14000332.

Al Capone: Gangster from the Gutter

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“I am like any other man. All I do is supply a demand.”¹ A quote from the notorious American gangster Al Capone, one cannot help but wonder if there is a sliver of truth behind this statement. Acting as the boss of the famed Chicago Outfit, Capone ruled the world of organized crime with an iron fist from 1925-1931.² With the United States government outlawing the “manufacture, sale, and transportation of alcohol from 1920 to 1933” through the Eighteenth Amendment, Capone took full advantage and made millions of tax-free dollars through bootlegging.³ Extremely violent and reactionary, Capone’s inability to escape the public eye swiftly gained him the attention of many Americans, who were both disgusted and enamored by his actions. However, a plethora of Progressive Era politicians and scholars recognized a trend for impoverished Americans: a path into the criminal underworld as a means of escape from poverty and a pursuit for better living conditions. After examining the environmental circumstances in which Capone was raised and his subsequent endeavors in illicit activities such as bootlegging, prostitution, and gambling, the framework of Shaw and McKay’s social disorganization theory offers an explanation to Al Capone’s entrance into the world of crime and his incredibly successful stint as the head of an organized crime empire.

Hailing from humble beginnings, Alphonse Capone was born on January 17th, 1899 in the borough of Brooklyn, New York to Italian parents.⁴ After coming to the United States from Naples, the Capones were initially forced to live in a small apartment, and only managed to upgrade to a small home at a later time.⁵ Living in a poverty-stricken immigrant community taught Al Capone to fend for himself and to

1 Dan Bryan, “Al Capone—the Villain of Prohibition?,” last modified June 5, 2012, accessed March 6, 2020.

2 J. J. Binder and A. J. Lurigio, “Introduction to the Special Issue—The Rise and Fall of Chicago’s Organized Crime Family: A Brief History of the Outfit,” *Journal of Contemporary Criminal Justice* 29, no. 2 (2013): 187.

3 Ibid, 185.

4 Luciano Iorizzo, *Al Capone: A Biography* (Westport: Greenwood Publishing Group, 2003), 23.

5 Ibid, 23.

learn how to survive the rough streets of his Brooklyn neighborhood. At the tender age of fourteen, he and other children of Italian immigrants formed “the Navy Street Gang to put an end to harassment of Italian women and girls by their Irish neighbors.”⁶ Though others would say that it was young Al Capone’s own choice to commit such an act, social disorganization theory would claim that he was simply acting in a manner that reflected his environment.⁷ Through the application of McKay and Shaw’s social disorganization theory, which “...attributes crime to the failure of social institutions and organizations to meet the needs of a community or neighborhood,” one could argue that the community will continue to act as a breeding ground for the development of criminal behavior.⁸ Capone’s learned behavior was put on display as he left school permanently after trading blows with a teacher who had struck him for disciplinary reasons.⁹ As a result of his actions, the school principal punished young Capone with a severe beating.¹⁰ After this experience, he left school and turned to the streets, a decision that would change his life forever.¹¹ A product of his environment, Capone was yet another immigrant from a poverty-stricken community turning to a career in organized crime, therefore completing the self-fulfilling prophecy of his environment.

Interestingly, McKay and Shaw’s contributions to social disorganization theory, which can be best summarized as “...the inability of a community structure to realize common values of its residents and to keep the effective social control,” occurred contemporaneously with the booming success of Al Capone in the criminal underworld.¹² Perhaps one of the most important aspects of McKay and Shaw’s work is the connection that the pair established between social disorganization and delinquency; they claimed that delinquency was “...normal response of normal individuals to abnormal social conditions,” and shifted the responsibility of such behavior to the environment of the affected individual.¹³ Therefore, the individual

6 Ibid, 24.

7 Ruth E. Masters, *CJ: Realities and Challenges* (New York: McGraw-Hill, 2010), 97.

8 Ibid, 97.

9 Iorizzo, 24.

10 Ibid, 24.

11 Ibid, 24.

12 B. F. A. da Silva, “Social Disorganization and Crime,” *Latin American Research Review* 49, no. 3 (2014): 220.

13 C. Wong, Clifford R. Shaw and Henry D. McKay, “The Social Disorganization Theory,” *CSISS Classics, UC Santa Barbara*:

that fell victim to an environment of social disorganization experienced “...an indirect loss in the ability to act communally and individuals exhibited unrestricted freedom to express their dispositions and desires, often resulting in delinquent behavior.”¹⁴ Whereas one may have previously labelled sixth grade Al Capone as a troublesome individual who lashed out at his teacher in spite, McKay and Shaw’s findings suggest that such delinquent behavior stems directly from the social disorganization found within young Capone’s community. However, that incident was not the only episode of violent and reactionary behavior from Capone. In fact, Capone became known for his characteristic ability to lash out or demonstrate brutal violence at the blink of an eye.¹⁵ In many ways, Capone continued to indulge in such violent behavior as a result of continuous exposure.

Once a young entrepreneur, Al Capone began to run with several different gangs in New York, from the Forty Junior Thieves to the Five Points Gang.¹⁶ His involvement in criminal activity eventually led him to jobs for local gangster Johnny Torrio.¹⁷ Torrio, who would later become Capone’s mobster mentor, assigned Capone to bartend and carry out jobs for local New York gangster Frankie Yale.¹⁸ An extremely violent individual, Yale was taken into custody on murder charges in 1912 and would later assassinate rival mobster “Big Jim” Colosimo for Johnny Torrio in order to get rid of competition in the bootlegging market.¹⁹ Capone would see similar scenes of violence, as the incident that birthed his infamous nickname “Scarface” occurred while he was employed by Yale. While working at the bar, a young, troubled youth named Frank Galluccio cut the side of Capone’s face after the gangster ridiculed his sister.²⁰ Most likely commonplace in the rough areas in which he and his fellow gangsters grew up and operated, Capone’s comments directly led to violent retaliation at his own expense. Had Al Capone been raised in a different environment, perhaps he would not have made such crude comments to a young woman. Likewise, had Frank Galluc-

Center for Spatially Integrated Social Science (2002): 1.

14 Ibid, 1.

15 Iorizzo, *Al Capone: A Biography*.

16 Michael Dickson, “Frankie Yale—Forgotten Boss,” *American Mafia History*, last modified January 4, 2015, accessed December 3, 2019.

17 Binder and Lurigio, 186.

18 Dickson, “Frankie Yale—Forgotten Boss.”

19 Dickson, “Frankie Yale—Forgotten Boss.”

20 Ibid.

cio grown up in a different neighborhood, perhaps he would not have responded with a verbal insult with the blade of a knife and an act of physical violence. Social disorganization theory states that the environment in which these two individuals were raised directly contributed to the violent manner in which this altercation occurred.²¹

After being left with facial scars that would forever define his appearance, Al Capone headed west to Chicago to reunite with Johnny Torrio.²² Capone spent several years as a key member of one of the largest Italian crime organizations in the city.²³ The organization, called “The Outfit,” earned millions of dollars of tax-free money from bootlegging, as well as other illegal industries such as, “labor racketeering, gambling, and extortion.”²⁴ After being the victim of a botched assassination attempt by rival gangs, Johnny Torrio chose to retire from organized crime and handed the reigns to Capone.²⁵ As the newest leader of the largest Italian criminal organization in the city of Chicago, nearly every citizen felt the effects of Capone’s actions. While his involvement in illicit industries such as bootlegging certainly contributed to the vast amount of social disorganization in Chicago, Capone’s countless violent disputes and murders with members of rival gangs led the city to be labeled “... the gangland murder capital of the country during Prohibition.”²⁶ Al Capone was once a vulnerable child from an impoverished, crime-ridden neighborhood in Brooklyn and he had come full circle to establish himself as the largest and most powerful mobster in the city of Chicago. He had gone from being a victim of the social disorganization created by others within his community to becoming the individual creating immense social disorganization in the city of Chicago, affecting the lives of thousands of men and women, as well as the futures of young children who would be forced to live in circumstances created by his criminal endeavors.

As time progressed, Capone gained more and more press for his alleged criminal activity and became quite the personality. Known affectionately as

21 Wong, Shaw and McKay, 1.

22 Binder and Lurigio, 186.

23 Ibid, 188.

24 Ibid, 184.

25 Ibid, 187.

26 J. J. Binder and M. Eghigian, “Gangland Killings in Chicago, 1919-1933,” *Journal of Contemporary Criminal Justice* 29, no. 2 (2013): 220.

“Snorky” due to his willingness to spend exorbitant amounts of money in order to appear fashionable, Capone had a difficult time laying low.²⁷ In fact, Capone “enriched his style by wearing [a] suit but altering its traditional colors; his bright lime green suits, brilliantly colored silk ties, and white hat allowed him to stand out in a crowd.”²⁸ With the increased profile and extra media attention, his sphere of influence began to reach much further than Chicago. Millions of Americans developed opinions about Capone and his alleged illicit activities. While Frank Sinatra and Louis Armstrong became household names due to their musical talents, Al Capone became a regular topic of discussion at the dinner table of many Americans due to his violent acts and involvement in gambling, prostitution, and bootlegging. With every breaking news story or television commentary that mentioned his name, most Americans became polarized by Capone and his operations. While some Americans were disgusted by his actions, desperate young men hailing from poor, immigrant communities most likely viewed Capone in a different light. As someone who had risen from the levels of street gangs to the head of a criminal organization, Capone represented someone who had seen an opportunity out of poverty and had taken it. Although a life of crime came with inherent risks and conflicts of morality, it was far more attractive than the abhorrent living conditions and low-paying, labor-intensive jobs characteristic of immigrant communities of the late nineteenth and early twentieth centuries.²⁹ Due to the high level of media coverage in regard to his alleged criminal activity and subsequent outlandish lifestyle, it is incredibly likely that Al Capone inspired an entire generation of individuals to pursue a similar career through organized crime. Capone’s methods of bribing law enforcement and public officials would be replicated by the later generations of the American Mafia, as “almost 50 years later the Mayor of Newark, New Jersey, Hugh Addonizio, retained strong connections to the local Mafia family.”³⁰ Therefore, the actions of Al Capone indirectly caused social disorganization

27 Sven Raphael Schneider and J. A. Shapira, “The Style of Al Capone,” *Gentleman’s Gazette*, last modified April 27, 2015, accessed December 3, 2019.

28 L. Beshears, “Honorable Style in Dishonorable Times: American Gangsters of the 1920s and 1930s,” *Journal of American Culture* 33, no. 3 (2010): 201.

29 National Museum of American History Staff, “History of Sweatshops: 1880-1940,” *National Museum of American History*, accessed December 3, 2019.

30 P. Reuter. “The Decline of the American Mafia.” *Public Interest* 120 (1995): 90.

nationwide, the effects of which would be felt by millions of Americans for decades to come.

While nearly a century has passed since the days of Al Capone’s mob rule over the city of Chicago, social disorganization continues to manifest and wreak havoc in specific communities in the United States today. Culpable to the environment in which Capone was raised, the neighborhoods affected by social disorganization exhibit the following characteristics: “...concentrated disadvantage, residential instability, racial and ethnic heterogeneity, immigrant concentration, and collective efficacy, are related to neighborhood crime rates.”³¹ As the subject of national news on a constant basis, the city of Chicago is home to some of the most crime-ridden and dangerous neighborhoods in the country. Due to the dire living conditions of residents within certain neighborhoods of Chicago, many individuals turn to a life of crime in an attempt to escape the dangerous and impoverished neighborhoods in which they grew up. While a great deal of individuals aspire to make enough money to flee their current lives and begin anew elsewhere, most of those involved in street life suffer one of two ends: incarceration or death. Overall, both the criminal justice system of the United States and the residents of impoverished and crime-ridden communities will continue to suffer as a result of their failure to properly address the issues of social disorganization.

What seemed like a pitiful death for one of the most infamous criminals in American history was simply the end of the road for yet another individual who had fallen victim to the environment in which he grew up. Upon his death at only forty-eight years old, the syphilis he had contracted years earlier from a prostitute had wreaked havoc on Capone’s brain, leaving him with the “mental capacity of a 12-year-old.”³² After it was discovered that he had bribed prison guards to retain contraband in his cell, Capone relocated from his prison in Atlanta to the infamous rock of Alcatraz. Although he lived a far more extravagant lifestyle due to his participation in illicit activities, Capone met the same fate as most individuals who pursue a life of violent crime: incarceration. Through his illustrious

31 R. E. Morgan and J. L. Jasinski, “Tracking Violence: Using Structural-Level Characteristics in the Analysis of Domestic Violence in Chicago and the State of Illinois,” *Crime & Delinquency* 63, no. 4 (2017): 393.

32 Kelly Phillips Erb, “Al Capone Sentenced to Prison for Tax Evasion on This Day in 1931,” *Forbes*, last modified October 17, 2018, accessed December 3, 2019.

career in the criminal underworld, Al Capone was able to escape the social disorganization that permeated within the impoverished and crime-ridden neighborhood in which he grew up. With its ability to justify why certain individuals raised within an impoverished and crime-ridden environment choose to pursue a life of crime, the framework of Shaw and McKay's social disorganization theory offers insight into Al Capone's eager pursuit of illegal activities, as well as his rapid rise to the top of an organized crime empire.

WORKS CITED

- Beshears, L. "Honorable Style in Dishonorable Times: American Gangsters of the 1920s and 1930s." *Journal of American Culture* 33, no. 3 (2010): 197–206. <https://doi-org.ezaccess.libraries.psu.edu/10.1111/j.1542-734X.2010.00743.x>.
- Binder, J. J. and A. J. Lurigio. "Introduction to the Special Issue—The Rise and Fall of Chicago's Organized Crime Family: A Brief History of the Outfit." *Journal of Contemporary Criminal Justice* 29, no. 2 (2013): 184–197. <https://doi-org.ezaccess.libraries.psu.edu/10.1177/1043986213485645>.
- Binder, J. J. and M. Eghigian. "Gangland Killings in Chicago, 1919-1933." *Journal of Contemporary Criminal Justice* 29, no. 2 (2013): 219–232. <https://doi-org.ezaccess.libraries.psu.edu/10.1177/1043986213485632>.
- Bryan, Dan. "Al Capone—the Villain of Prohibition?" Last modified June 5, 2012. Accessed March 6, 2020. <https://www.americanhistoryusa.com/al-capone-the-villain-of-prohibition/>.
- da Silva, B. F. A. "Social Disorganization and Crime." *Latin American Research Review* 49, no. 3 (2014): 218–230. <https://doi-org.ezaccess.libraries.psu.edu/10.1353/lar.2014.0041>.
- Dickson, Michael. "Frankie Yale—Forgotten Boss." American Mafia History. Last modified January 4, 2015. Accessed December 3, 2019. <https://americanmafiahistory.com/frankie-yale-forgotten-boss/>.
- Erb, Kelly Phillips. "Al Capone Sentenced to Prison for Tax Evasion on This Day in 1931." *Forbes*. Last modified October 17, 2018. Accessed December 3, 2019. <https://www.forbes.com/sites/kellyphillipserb/2018/10/17/al-capone-sentenced-to-prison-for-tax-evasion-on-this-day-in-1931/#550c34697c4c>.
- Iorizzo, Luciano. *Al Capone: A Biography*. Westport: Greenwood Publishing Group, 2003.
- Masters, Ruth E. *CJ: Realities and Challenges*. New York: McGraw-Hill, 2010.
- Morgan, R. E. and J. L. Jasinski. "Tracking Violence: Using Structural-Level Characteristics in the Analysis of Domestic Violence in Chicago and the State of Illinois." *Crime & Delinquency* 63, no. 4 (2017): 391–411. <https://doi-org.ezaccess.libraries.psu.edu/10.1177/0011128715625082>.
- National Museum of American History Staff. "History of Sweatshops: 1880-1940." *National Museum of American History*. Accessed December 3, 2019. <https://americanhistory.si.edu/sweatshops/history-1880-1940>.
- Reuter, P. "The Decline of the American Mafia." *Public Interest* 120 (1995): 89–99. <http://search.ebscohost.com.ezaccess.libraries.psu.edu/login.aspx?direct=true&db=a9h&AN=9510086552&site=ehost-live&scope=site>.
- Schneider, Sven Raphael and J. A. Shapira. "The Style of Al Capone." *Gentleman's Gazette*. Last modified April 27, 2015. Accessed December 3, 2019. <https://www.gentlemansgazette.com/al-capone-gentleman-style/>.
- Wong, C., Clifford R. Shaw and Henry D. McKay. "The Social Disorganization Theory." *CSISS Classics, UC Santa Barbara: Center for Spatially Integrated Social Science*. 2002. <https://escholarship.org/uc/item/47j411pr>.

Prison-Based Gerrymandering and the Misrepresentation of African Americans

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The Census Bureau is a United States governmental organization responsible for collecting data used by states for election and redistricting purposes. However, the official number of residents in a district may not be indicative of its actual population. Thousands of prisoners are displaced when they are counted in the community they are confined in, as opposed to their residential communities.¹ This discrepancy, labeled prison-based gerrymandering, has been a prevalent issue for when the Census is taken, which has a major effect on redistricting. African Americans make up the largest incarcerated group, at 41.3 % of the prison population, and as a result, are most affected by prison-based gerrymandering policies.² Although there are some states with reforms relocating prisoners to facilities in their previous communities of residence, there has been little movement towards reform for prison-based gerrymandering as a whole. With the placement of prisons in society and criminal policies, history has implied a racially biased system against all African Americans in the United States. This paper will consider how the geographic placement of prisons and laws such as the “usual residence” rule place urban and African American communities at a disadvantage, despite precedents that support prisoners being counted in their home communities.

As Remster and Kramer note, the 1960s was a time period when African Americans faced discriminatory practices.³ During this time, urban areas were suffering from economic and political turmoil, as well as rural areas, prompting politicians from areas outside of urban districts to compete for prison contracts within their own districts.⁴ This business eventually

led to an increase in prison facilities within suburban and rural areas. Thus, the vast number of prisons built in rural areas, compared to the number of prisons built in urban areas, transferred economic power to these rural areas.

In New York during the prison boom, for instance, “twenty-eight of twenty-nine new correctional facilities in New York were built upstate.”⁵ 66% of prisoners in that state have a residential address located in New York City, but “91% of these prisoners are incarcerated outside of the city.”⁶ In 2000, the Census Bureau counted 43,000 New York City residents in upstate communities, leading to a 30% “population growth” within these districts.⁷ In addition to New York, other states, such as Illinois and California, also face the same predicament.⁸ Research suggests that the massive transfer of the prison population from urban to rural areas not only shifts economic power to rural areas, but also shifts political power to these rural districts.

African Americans are largely impacted by the structure of the system. For example, “7.7% of the African-American voting-age population, or one out of every thirteen Black adults is disenfranchised due to a conviction,” a rate four times that of the voting population, which has a rate of 1.8%.⁹ Because of felony disenfranchisement laws and the War on Drugs, African Americans currently make up, and have made up for several years, the majority of the prison population.

Furthermore, the War on Drugs drastically elevated racial disparities in the criminal justice system, as African Americans remain the population most heavily targeted for drug-related offenses.¹⁰ During this historical time period, the level of incarceration African Americans faced in 1983, compared to the rate in 2000, was more than twenty-six times higher. When compared to Latinos admitted for drug-related offenses, the rate grew to be more than twenty-two

5 Ibid, 424.

6 Ho, “Captive Constituents,” 362.

7 Ibid, 362.

8 Ibid, 362.

9 Julie A. Ebenstein, “The Geography of Mass Incarceration: Prison Gerrymandering and the Dilution of Prisoners’ Political Representation,” *Fordham Urban Law Journal* 45, no. 2 (2018): 334.

10 Ho, “Captive Constituents,” 361.

1 Brianna Remster and Rory Kramer, “Shifting Power: The Impact of Incarceration on Political Representation,” *Du Bois Review-Social Science Research on Race* 15, no. 2 (2018): 418.

2 Dale E. Ho, “Captive Constituents: Prison-Based Gerrymandering and the Current Redistricting Cycle,” *Stanford Law & Policy Review* 22, no. 2 (2011): 361.

3 Remster and Kramer, “Shifting Power,” 424.

4 Ibid, 424.

times higher over the same period.¹¹ And when compared to whites, there is an “alarming increase in the incarceration rates of African American males when African American males’ drug usage is nearly identical to that of Whites.”¹² These statistics illustrate that there is a structural implication on the African Americans population in the criminal justice system due to felony disenfranchisement laws and because they are disproportionately targeted by the War on Drugs.

Along with the location of prisons and the number of incarcerated African Americans moved to facilities in rural areas, the policies that count these individuals in these districts also have a great impact on the redistricting process, and ultimately the electoral process. The “usual residence rule,” described in the Public Law 94-171 data file, claims that a person is counted where they “live and sleep most of the time.”¹³ However, group quarters may impact the population of a community. “Group quarters” (GQ’s) refer to living arrangements including military barracks, dormitories, and prisons. These living situations can be challenging when population counts are conducted because individuals living in GQ’s may consider their “home” to be a different place from where they usually live and sleep.¹⁴

The states, disregarding the previous residence of the incarcerated, count incarcerated individuals in the district they are imprisoned in. However, there are constitutional statutes and case laws that support counting imprisoned African Americans in their district of origin.¹⁵ When making these decisions, the courts acknowledge that the apportionment of congressional representatives is dependent on the decennial census, and the one person, one vote principle is critical because it is a part of the Equal Protection Clause. The principle “requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.”¹⁶

Another issue is that a majority of states have

11 Ibid, 361.

12 Gerald K. Fosten, “Perspectives on Social Inequality, Criminal Justice, and Race in the United States: A Critical Analysis,” *The Journal of Pan African Studies (Online)* 9, no. 9 (2016): 127.

13 Ho, “Captive Constituents,” 359.

14 Ibid, 359.

15 Ibid, 356.

16 Devon Galloway, “The Numbers Matter: An Update to the Implementation of New York’s Prison Gerrymandering Law,” *Columbia Journal of Race and Law* 4, no. 2 (2014): 211.

a Constitutional statute stating that “incarceration does not change a person’s residence.”¹⁷ This provision endorses the idea that incarcerated persons are not residents of the communities they are confined in, but rather are considered constituents of their home communities. In *People v. Cady*, the voter registration of the defendant was considered illegal because he registered to vote at the prison in which he was imprisoned. The New York Court of Appeals “emphasized that incarcerated persons cannot be legal residents of a prison for purposes of voting, because they are confined involuntarily.”¹⁸ This court case supports the concept that incarcerated individuals remain residents of their previous communities after imprisonment, and reinforces the notion that prisoners should be counted in their home communities.

Also applicable to this discussion is *Franklin v. Massachusetts*, a 1990 court case that addresses the counting of over 900,000 overseas federal employees. While the plaintiffs argued that counting these individuals at their “home of residence,” in Massachusetts, was unreasonable, the Department of Defense, whose argument prevailed, claimed that overseas military personnel should be included in apportionment counts because their residence overseas is “temporary and involuntary.”¹⁹ Additionally, the Court emphasized the “enduring tie” concept, and claims “for purposes of apportioning congressional representation, a person’s ‘residence’ ‘can mean more than mere physical presence, and has been used broadly enough to include some element of allegiance or enduring tie to a place.’”²⁰ The logic presented in *Franklin* can be applied to the incarcerated population because (1) all prisoners lack an “enduring tie” to the community they are imprisoned in, (2) they are not located within these communities voluntarily, (3) “incarcerated individuals’ only contact with the outside world is through their relationships prior to arrest,”²¹ and (4) upon release, incarcerated individuals will most likely return to their previous residences. Thus, it is safe to say that district lines can be drawn, predicting the return of prisoners.²²

Representational and electoral equality are additional reasons why detained African Americans

17 Ho, “Captive Constituents,” 364.

18 Ibid, 365.

19 Ebenstein, “The Geography of Mass Incarceration,” 341.

20 Ho, “Captive Constituents,” 368.

21 Ibid, 369.

22 Ibid, 369-370.

should be counted in their home communities. In *Calvin v. Jefferson*, the plaintiffs argued that their votes were diluted because District 3, which housed Jefferson Correctional Institution, counted the prison population. According to the district court, which favored the plaintiffs, the county commission districting scheme did not promote representational equality because “county officials could not legitimately claim to be ‘representing’ prisoners in any way.”²³ Electoral equality was violated because “the state relied on prisoner-inclusive calculations to conclude there was substantial population equality among the districts.”²⁴ Representatives of these individuals’ home district, however, do consider them a part of their constituency, regardless of where the incarcerated person is detained.²⁵

Politicians are incentivized to build prisons in mostly rural areas because of the economic growth it brings to their communities. Politicians profit from mass incarceration and do not address these issues because it may hamper their economic prosperity. If we follow precedents, then in fact, African American prisoners should be counted in their home communities. But politicians are caught in a loop with prison facilities and mass incarceration. Because the construction of a prison facility inflates the political power for their residents, “representatives are incentivized to favor policies that favor even more mass incarceration.”²⁶ This mechanism places African Americans at a continuous disadvantage because they constitute the largest incarcerated population. Furthermore, counting prisoners in their confined districts affects funding. Districts may receive additional funding if they include prisoners in their count, and the districts that lose prisoners due to incarceration may lose funding because of an undercount in their population.²⁷ Politicians benefit from mass incarceration and counting prisoners in their district because of the economic advantages that come along with prison-based gerrymandering. Incarcerated African Americans are negatively affected by prison-based gerrymandering through the loss of representational and electoral equality and are controlled by the structure of the system.

23 Michael Skocpol, “The Emerging Constitutional Law of Prison Gerrymandering,” *Stanford Law Review* 69, no. 5 (2017): 1502.

24 *Ibid.*

25 Ho, “Captive Constituents,” 371.

26 *Ibid.*, 364.

27 *Ibid.*, 378.

If this issue remains unchanged, the communities of African American prisoners will be at a continuous disadvantage. All states should address prison-based gerrymandering, like New York and Maryland, by using data released by the Census Bureau ahead of the Census to count incarcerated individuals at their home addresses.²⁸ States should also address prison-based gerrymandering because the system’s structure dictates the displacement of African Americans in rural communities during detainment. African Americans counted in their communities of incarceration will inflate the political power of these rural areas and of non-incarcerated constituents and it will dilute the voting power of urban communities and non-incarcerated African Americans. Constituents can also reach out to legislators and advocate for further legislation to end prison-based gerrymandering. Returning prisoners to their home districts during population counts will ensure that African Americans are appropriately counted and that their interests are appropriately represented by their home district’s legislators.

WORKS CITED:

- Ebenstein, Julie A. “The Geography of Mass Incarceration: Prison Gerrymandering and the Dilution of Prisoners’ Political Representation.” *Fordham Urban Law Journal* 45, no. 2 (2018): 323-372.
- Fosten, Gerald K. “Perspectives on Social Inequality, Criminal Justice, and Race in the United States: A Critical Analysis.” *The Journal of Pan African Studies (Online)* 9, no. 9 (2016): 122-141.
- Galloway, Devon. “The Numbers Matter: An Update to the Implementation of New York’s Prison Gerrymandering Law.” *Columbia Journal of Race and Law* 4, no. 2 (2014): 205-224.
- Ho, Dale E. “Captive Constituents: Prison-Based Gerrymandering and the Current Redistricting Cycle.” *Stanford Law & Policy Review* 22, no. 2 (2011): 355-394.
-
- 28 Remster and Kramer, “Shifting Power,” 423.

Remster, B. and R. Kramer. "Shifting Power: The Impact of Incarceration on Political Representation." *Du Bois Review-Social Science Research on Race* 15, no. 2 (2018): 417-439.

Skocpol, Michael. "The Emerging Constitutional Law of Prison Gerrymandering." *Stanford Law Review* 69, no. 5 (2017): 1473-1539.